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JUSTICE AND HEALING FOR VICTIMS OF SEXUAL ABUSE IN CANADIAN INDIAN RESIDENTIAL SCHOOLS

by

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ABSTRACT

This thesis examines the impact of the Canadian criminal and civil justice processes on aboriginal people who are survivors of child sexual abuse in Canadian Indian residential schools. The focus of this thesis is whether legal processes meet the justice and healing needs of aboriginal victims of sexual abuse. In examining the impact of the justice system, an analysis of two court cases, namely the R. v. O'Connor criminal case and the Blackwater et al v. Plint et al (1998) civil case adjudication is presented. The O'Connor criminal case exemplifies the challenges victims face with substantial and procedural justice. In contrast, the Blackwater civil case exemplifies the problems victims face in demonstrating the responsibility or legal liability of the offending party or parties concerned, and in substantiating that they need to be compensated for their trauma and hardships.

As the issues confronted by victims may be insurmountable, alternatives to mainstream justice have been sought. The alternatives take the form of aboriginal community justice initiatives. These present their own unique challenges and dilemmas for victims and their communities. However, victims appear to express hope for either community-based initiatives or a renewed justice system that will accommodate their cultural and individual rights. This is indicative of diversity regarding justice and healing needs of aboriginal victims.
government was responsible for financial matters (Kirkness 1992). However, the tasks of the church and the state were not always defined clearly.

Christianization and Christianization provided the rationale for the creation of 'separate' schools for indigenous children. According to Miller (1987:5), the term 'residential schools' has been formally used since the 1920s. Prior to the 1920s, Indian residential schools were officially divided into two categories: industrial and boarding schools. The AFN (1994:3) elaborates that industrial schools were generally located far away from First Nations' home communities. Older children from the ages of 14 to 17 attended them although younger children were not excluded from enrolling in them.

In contrast, boarding schools were generally located in or near First Nations' communities. Boarding schools were smaller than industrial schools, and intended for attendance by younger children. Young children were coercively removed from their homes and confined to school compounds for unreasonably long durations. This was done in order to remove the presumed deleterious effects of their parents as well as to eliminate their Indian identity (York 1992; Dyck 1991).

Irrespective of the terminology used for Indian residential schools, all residential schools can arguably be defined as 'total institutions' akin to maximum security prisons whereby virtually all aspects of students' lives were controlled and highly regimented (Haig-Brown 1988; Barman 1995). In this regard, work by Goffman (1990) on the topic of social interaction in institutional environments is noteworthy. As in any total institution, Indian residential schools exhibited power hierarchies and dichotomies as they relate to the keeper/kept relationship. Within hierarchical institutions, abuses of authority often occur. Not surprisingly then, a significant number of adult survivors report that Indian schools
wounded them in multifaceted ways: spiritually, culturally, physically, emotionally and sexually.

According to the AFN (1994:2), in addition to the reporting of the pain of separation from their families and their home communities, adult survivors are coming forward with stories of sexual violations in residential schools -- with the intent to resolve their trauma. Today, many victims are involved in healing strategies. An important component of their personal and collective healing is to mobilize the Canadian justice system. Both criminal and civil justice proceedings have been invoked to ensure that those deemed responsible for their victimization are duly brought to justice. Across the country, there is a court backlog of over 7,000 civil cases (Tibbetts 1999). This thesis will examine whether the Canadian justice system, comprising criminal and civil court processes, promotes justice and healing for adult survivors of child sexual abuse that occurred in Indian residential schools.

Among the various First Nations communities and individuals, diversity of opinion exists as to what kinds of justice measures are needed. Some individuals and communities opt for imprisonment of offenders; others opt for public apologies; some others opt for monetary compensation from those directly and indirectly responsible for their victimization, including the church and the federal government. Still others opt for community-based justice known as 'Healing Circles'. The Alkali Lake community of British Columbia and the Hollow Water community of Manitoba are just two communities that have implemented Healing Circles.

In chapter two, I have employed a qualitative methodological approach in my study. My thesis is a critical analysis on the topic of sexual abuse in residential schools particularly as it relates to victims' needs to seek justice and healing through adjudication. The sources for analysis will be available primary and secondary works in newspaper articles, journal
articles, books, radio broadcast reports, periodicals, the internet and electronically published
documents including the residential schools study report compiled by the Royal Commission
on Aboriginal Affairs (RCAP) (1997) on CD-Rom diskette.

Although victims' and their communities' accounts of sexual abuse appear both in primary
and secondary works, it will be demonstrated how the presentation of the 'story' differs in
each source. Along with the accounts of sexual abuse, the scholarly contribution of
aboriginal and non-aboriginal groups and individuals, on the topic of sexual abuse and
healing will be presented. As well, the case studies from criminal and civil courts will be
examined to explain how victims perceive the different stages of criminal and civil litigation,
which can be described as a 'maze'.

Following a discussion of methods used, I will identify three specific limitations of my
study:

(a) The study is about those victims and their communities who have publicly given their
accounts of sexual abuse in residential schools, and their experience with the Canadian
justice system. The study, therefore, is not about those victims who have chosen not to
publicly given their accounts, nor is it about those victims who were not in a position to give
their accounts.

(b) Due to the intensely personal nature of my topic, it has not been possible to directly
contact people and conduct surveys or interviews, or for that matter conduct any non-
obtrusive studies using say audio-visual or participant-observation methods.

(c) As in any study involving severe personal trauma, the study recognizes that the
problem of selective recall is a reality for adult survivors of sexual abuse. Survivors may not
be able to remember all of the traumatic events. Research conducted by Meiselman (1990),
Dolan (1991), Harvey and Dauns (1993), Bannister (1992) and Freyd (1996) indicates the impact of trauma on adult survivors of sexual abuse, and how selective recall has a bearing on the legal outcome of criminal cases.

My thesis will give a review of literature in chapter three. I will begin with the history of residential schools starting from the ideological underpinnings that led to the federal policy of assimilation for aboriginal students as mandated by the Department of Indian Affairs (DIA). The reciprocal role of the church and the state will be highlighted as a foundation for the perpetuation of separate schools for Indians. In explaining the separate schools, the ideology of inequality and the rationale for the 'burden of tutelage' will be mentioned. The different reasons for Indian schooling will be tied together in an effort to explain colonialist perspectives that pervade the history of residential schools in Canada, and in some instances, in the United States.

Chapter four will consider victims' and their communities' responses to their trauma. Specifically, I will look at what victims say about their experiences of sexual abuse. In particular, victims' responses to their trauma will be discussed as it relates to the shame and pain, and the multigenerational social pathologies they have had to encounter as a result of their trauma. Aboriginal scholars write about the trauma of sexual abuse and the legacy of residential schooling (Knockwood 1992; Hill 1995; Jaine 1993; AFN 1994) in no uncertain terms. In their work, the poignant personal narratives and poetry of other survivors from across the country have been shared as modes of expressions of their intense pain. The expressions reveal that personal and community empowerment is the ultimate goal.

In chapter five, victims' experiences with our criminal justice system will be discussed. In the first section of this chapter, the R. v. O'Connor criminal case will be highlighted as the
central case for analysis pertaining to the difficulties individuals encounter when invoking the Euro-Canadian justice system. The legal rights and principles that underlie substantive law will be underscored. Substantive law covers all kinds of cases, for example, criminal, tort and contract cases (Black 1996). Dukelow and Nuse (1991:1042) define substantive law as "the part of the law which creates and defines rights as opposed to procedural law which prescribes methods of enforcement." Black (1996) explains that substantial law creates, defines and regulates rights and duties of parties. In my thesis, it will be demonstrated that for criminal court processes, legal procedures revolve around three contentious issues of fact-finding: (a) consent, (b) credibility, and (c) full disclosure.

In the second section of this chapter, another landmark British Columbia case indexed as Blackwater et al v. Plint et al (1998) will be highlighted as the civil case for analysis. The perceived difficulties victims experience with civil court proceedings will be highlighted. I will especially focus upon the difficulties related to compensation and accountability from those responsible for the perpetuation of the crime of sexual abuse in residential schools. Emphasis will be placed on direct and vicarious liability when explaining responsibility of the different sectors.

Wiwchar (1998), one of the regular political/legal aboriginal commentators for an aboriginal newsletter titled Windspeaker gives a practical definition of civil liability. Using the Blackwater et al v. Plint et al (1998) civil case involving about 30 former students of Alberni Residential School, Wiwchar says that the British Columbia Supreme Court Judge Brenner ruled during the first stage of the trial that both the United Church and the federal government are vicariously liable. The argument presented is that both the church and the
federal government were aware of the sexual abuse, and should have taken steps to deal with it.

In the second stage of the trial, Judge Donald Brenner ruled that the principal at Alberni knew what was going on but did nothing to stop it. This is, in short, direct liability. In direct liability cases, the school principal could be declared legally responsible for not acting upon complaints of abuse brought forth by aboriginal children. This matter is pending before the courts. Unfortunately, the ruling of Judge Brenner pertaining to the quantum of damages will not be made soon. Judge Brenner still has to give his final ruling on Phase II in which specific responsibility of each party must be assessed. Phase III or the final phase will determine monetary settlement. However, this phase has been postponed indefinitely from its originally scheduled period of October 1999.

Notwithstanding, monetary and time factors affect the fate of each civil court case. These will be explored. In addition, some emphasis will be placed on the concept of public apologies by the church and the federal government, and the meaning of apologies to the recipients whose responses range from 'talk is cheap' to total acknowledgement and forgiveness.

In chapter six, aboriginal justice initiatives as alternatives to Euro-Canadian justice system will be discussed. The philosophies underlying indigenous community-based sentencing and healing initiatives will be weighed against western philosophies of criminality and justice. The goals of the two justice systems will be compared and contrasted, and it will be demonstrated how each justice system succeeds or fails to address the needs of aboriginal communities.
In terms of feasible alternatives to adversarial justice, restorative or holistic justice models will be critiqued. Their applicability will be assessed against the political, fiscal and time-related factors that may or may not support the implementation of alternative justice models that accommodate aboriginal cultures and traditions. The justice models postulated by both aboriginal and non-aboriginal scholars and researchers will be compared and any parallels or congruities drawn. Specifically, the models put forth by Ross (1996), LaRocque (1997), Redekop (1998), Turpel (1994), Huculak (1995), Robinson (1990), and Clairmont (1996) will be critiqued.

I will conclude my thesis in chapter seven. In this chapter, a summary of my argument will be presented together with its implications. A discussion of final thoughts will be mentioned as it involves the future of aboriginal justice, and recommendations for reforms. The feasibility of recommendations will be weighed against the fiscal and time constraints, as well as against the political climate. The recommendations will be assessed using the 'push and pull factors' that occur among the diverse aboriginal groups and among government bureaucracies.

In closing this chapter then, this thesis is about the experiences of victims of sexual abuse in Indian residential schools. Victims' needs with regard to justice and healing form an integral part of my study. Their perceptions of our justice system, and their need to explore alternatives to Euro-Canadian justice form equally important facets of my study.

Having outlined the course of this thesis, a chapter on how I will conduct my study is in order. The next chapter will discuss methodological issues in conducting literature-based research that comprises an analysis of primary and secondary documentation, including narratives and stories on the topic of sexual abuse in Canadian Indian residential schools.
Chapter Two

METHODOLOGY

My thesis is a critical analysis of sources that cover the topic of sexual abuse in Canadian Indian residential schools. It is a qualitative study involving compilation, critique and analysis of narratives, stories, reports and court cases. Much of the literature on sexual abuse of native children in residential schools has been recently published. This is not to say that documented sexual abuse accounts in the form of personal narratives and stories did not exist until recently. Rather, some personal accounts of abuse from adult survivors date as early as the beginning of this century. Accounts of abuse have been compiled by survivors of sexual abuse as well as by third parties.

The documented accounts from both private and public individuals and organizations on the topic of sexual abuse in residential schools constitute my primary and secondary sources for analysis. Sources used are available literature in mainstream and aboriginal newspapers, journal articles in bound copies and/or on-line, in addition to recently published books that include autobiographical information. Local and international radio broadcast reports, including the British Broadcasting Reports (BBC) (homepage address: http://www.bbc.co.uk) from London were accessed. As well, newsletters that are published exclusively by aboriginal scholars, for instance, Healing as Justice together with topically generated databases, for example, BiblioLine (NISC International Inc.©1997-2000), which highlights issues of aboriginal justice and healing in Arctic and Sub-Arctic regions, have been used. Other internet sources utilized are Lexis-Nexis Canada (operated by Butterworths Canada Ltd.) which keeps an up-to-date online legal database regarding individual criminal case histories, including the Reasons for Judgement pertaining to the O'Conner criminal case.
case. As well, Quicklaw (managed by QL Systems Limited) online database was accessed for comprehensive and concise criminal court litigation data.

Accessing criminal court documentation pertaining to sexual offences in residential schools was a cumbersome task at its best. This is because the over 1000 pages retrieved from non-governmental databases such as Lexis-Nexis contain highly technical legal language. This problem was compounded by the extremely detailed nature of legal interpretations, which take the form of dissenting and assenting views put forth by legal scholars regarding the rulings given by various presiding judges. In the well-documented and thoroughly analyzed O'Connor criminal case, seven Supreme Court of Canada presiding justices gave their rulings due to the unsuccessful resolution of key issues by the lower courts.

As a matter of interest, the presiding justices' analysis in the O'Connor criminal case are centred on issues of consent, credibility and full disclosure of victims' personal and private records. Their analysis has triggered mainly refuting views from those individuals interested in systematic racism, and to some extent gender inequities. This demonstrates that the O'Connor case has sparked intense debates, including national debates from aboriginal leaders who find that the initial verdict originating at the lower court level repeat past injustices done to aboriginal people. The initial verdict that almost acquitted the offender is analogous to 'the rape of a nation'.

In addition to using non-government web site data, government documents available on web site (www.courts.gov.bc.ca) regarding British Columbia criminal and civil cases were examined. Information on adjudication ranged from the decisions rendered by the lower courts of the province (the British Columbia Provincial Court and the British Columbia
Supreme Court) to the decisions rendered by the highest British Columbia court, namely the British Columbia Court of Appeal. The Supreme Court of Canada decisions and the Reasons for Judgement were also accessed using the specific year each case was heard. In the event the required information could not be obtained using a specific year of reference, the names of litigants proved helpful in gathering the required data.

The relevant government documents regarding criminal court decisions were cross-checked with information available elsewhere such as in bound publications titled *Canadian Criminal Cases* and *Dominion Law Reports*. These were obtained at the local court library. The cross-checking enabled me to fill the gaps in information, and to delineate multiple issues, for example (i) separating the facts of each case from interpretations, and (ii) separating commentary given by individuals from judges' decisions.

*The Criminal Code* of Canada was also accessed to obtain details of various provisions that were applied to the mainly *R. v. O'Connor* criminal case. Details of the pre-1985 (before the *Criminal Code* was consolidated) provisions, namely sections 135 and 143 were also obtained because these two sections were retroactively applied to the *O'Connor* case. In addition to the *Criminal Code*, the 1982 *Charter* sections and subsections were obtained to show how they apply to the rights of the accused and the complainant.

Finally, other electronically published documents especially those compiled by the Royal Commission on Aboriginal peoples (RCAP) (1997) were retrieved from CD-Rom diskettes. Although RCAP reports are regularly published in a book format, electronic publications are preferred for ease of reference. Besides, the latter enable selective printing of information expediently.
Overall, the task of compiling all the relevant sources in a systematic manner was a complicated one. In particular, newspaper articles presented the greatest challenge among the sources used for analysis due in part to their lack of consistent thematic presentation. Each article, therefore, had to be categorized by subject. By using similar themes, a continuity of events was established. Furthermore, the facts regarding each article had to be sorted out from personal opinions that at times merged with sensationalistic appeals.

In total, close to 100 sources were gathered as primary and secondary readings. The various difficulties that emerged as I attempted to address the merit of contribution of each source can be systematically grouped into three categories, namely neutrality of presentation, accuracy and consistency. Not surprisingly then, of all the sources used for analysis, newspapers articles presented the greatest challenge. These are explained as follows:

(a) Although newspaper accounts are deemed important sources of victims' ordeal with the justice system, the reportage of facts was perhaps distorted and biased on occasions. Arguably, newspaper accounts tend to filter down true accounts as a result of personal and professional constraints and/or as a result of lack of objective information. Then, I faced the problem of conflicting information. The mainstream The Globe and Mail newspaper and the aboriginal Windspeaker newsletter are just two sources that highlight this problem. Different versions or interpretations of the same situation leave the reader to decipher the facts.

In other aspects of reportage, one finds that the style of reporting is not always reflective of factual presentation of the story based on neutral participant-observant rules. The sensational style of reporting the O'Connor trial is a case in point. Obviously, the sensational reportage 'spices' facts to sell the story. The Saturday Night journal is perhaps guilty of reporting the O'Connor case as if it was a Hollywood love story (Birnie 1994:40). In fact,
Birnie compares the case to the made-for-television mini-series *The Thorn Birds* in which a priest faces scorn after breaking his vows of chastity.

(b) Even when journalists present first-hand accounts, something is lost during the compilation of an article. For instance, when the central victim in the *O'Connor* case gave her personal stance on community-based healing as a feasible alternative to *The Prince George Citizen* (1998:3), the article was titled "Bishop Makes Apology ...." thus misplacing and trivializing the victim's response. Inadvertently, the 'fallen' bishop who is also the offender is portrayed in the best light. As the title misleads most readers, they will be inclined to focus on the sorry state of the bishop and not on the significance of community justice for the victim.

(c) Victims' responses about criminal trial proceedings can be very emotional. Perhaps journalists feel that they have to give their personal take on victims' outrage at the perceived injustices, amidst the dogged denial of any wrongdoing by those defendants who have previously enjoyed a high social ranking. Conversely, emotive responses may not be accurately recorded as reporters providing coverage are not entirely non-judgemental. Moreover, they have scanty information to work with. As third party sources, the knowledge they can provide on a case may be inadequate. In the end, what we have is a lot of speculation without definite empirical support.

As many victims of sexual abuse in Indian residential schools are still pursuing justice both at the criminal and civil court levels, we do not yet have conclusive information about their final choices. Nor do we have up-to-date information about what victims will say about their personal and collective healing given that unexpected mitigating circumstances may promote or impede healing.
Needless to say, any qualitative study, even a study about available literature on social and legal issues, carries inherent limitations. My study is no exception. Five major limitations are foreseen. They are as follows:

(a) The study is about the experiences of those victims and communities who have come forward to report their accounts of sexual abuse in Canadian Indian residential schools. Some of the victims have also publicly reported their ordeal with the justice system, as it relates to their secondary victimization and perceptions of injustice. We know from the second-hand accounts provided by aboriginal people like Knockwood (1992), Jaine (1993) and the AFN (1994) that sexual abuse in Indian residential schools was widespread. In some instances, "specific inquiries have turned up evidence of pervasive abuse." (Miller 1996:333). Miller claims that a 1991 report by the Cariboo Tribal Council revealed that of the 187 former St. Joseph Residential School students who were interviewed about their experience of sexual abuse, 89 answered in the affirmative.

Across Canada, victims have publicly acknowledged the pain and shame of their trauma. It is suggested that some of the victims have chosen alternate paths to healing by choosing culturally based therapies. The number gets smaller in that very few of the victims do actually invoke criminal and civil court proceedings. A disproportionate number of victims find the road to justice too turbulent to endure (Henton and McCann 1995). Consequently, they have decided not to proceed beyond the preliminary stages of litigation.

The Blackwater et al v. Plint et al (1998) civil liability case alone demonstrates the difficulties with matters of adjudication. Estimates suggest that Plint, the former dormitory supervisor at Alberni Indian Residential School victimized countless young boys. His transgressions rightfully earned him the title of 'sexual terrorist' given by the sentencing
Judge Hogarth (Lazaruk 1995). However, only about 30 of Plint's victims are pursuing compensation in the pending liability case. The number keeps on unfortunately shrinking as victims give up not only on justice, but on life itself. Very recently, one of the key witnesses, Darryl Watts, committed suicide (Wiwchar 1998).

The deceased individuals as well as the 'silent' ones, and those who have chosen alternative avenues for seeking justice and healing, constitute in criminological terms the 'dark figure' of victimization. The dark figure of sexual abuse is similar to victims of robbery and other serious crimes who may not be in a position to publicly talk about their trauma. Miller (1996) concisely addresses the 'dark /hidden figure' of victimization in his discussion. He explains that the reasons for silence by former students of residential schools "range from simple embarrassment to intense psychological denial of horrific memories." (333). In the 1991 Cariboo Tribal Council study of St. Joseph Residential School alone, 60 out of the 187 former students refused to answer [the interviewer's questionnaire], and 38 reported no victimization (Miller 1996:333). Henceforth, due to the dark figure of victimization, accurate statistical information regarding sexual abuse in Indian residential schools is not possible.

(b) As in any study involving severe personal trauma of childhood sexual abuse, my study recognizes that some victims learn to survive by denying or distorting their victimization. The result is selective recall or inability to recall the entire victimization. Research shows that partial or complete inability to recall sexual abuse is not a conscious process (Dolan 1991; Bannister 1992; Meiselman 1990). Forgetting, denying or distorting have consequences for those adult survivors who testify as witnesses. They appear not to tell the 'whole truth'. As a result, they may be prejudged as 'not real victims'. Worse still, the
passage of time seems to work against adult survivors in that they may not be able to remember all the details of their trauma thus compounding the risk of appearing as non-credible witnesses.

(c) Due to the intensely personal nature of my topic, it has not been possible to conduct a first-hand study of victims' experiences. In studies involving less personal topics, surveys or interviews (structured or unstructured), or for that matter, non-obtrusive studies using audio-visual or participant/observation methods are helpful. However, for my topic, reliance on primary and secondary sources comprising generally second-hand and even third-hand accounts has become necessary.

(d) My thesis addresses the feasibility of alternative justice initiatives in aboriginal communities. Communities plagued with social pathologies such as alcohol abuse, spousal abuse, high mortality and illnesses must move towards living healthy, fuller lives before they undertake steps towards creating separate justice systems (extrapolated from York 1992). York's study of the Alkali Lake community points out the importance of taking the responsibility to heal first. Alkali Lake Band runs native controlled-treatment centres for social problems like high alcoholism. York suggests that the community has undertaken drastic steps to tackle alcohol abuse as the root cause of social, economic and psychological dysfunction. This may appear as a simplistic approach but the community has taken the responsibility and the initiative towards health and healing. The community "brought Elders to help counsel their clients on native spirituality [with their guiding philosophy] as culture is treatment; all healing is spiritual; the community is a treatment centre; we are all counsellors." (York:183)
(e) As my thesis involves looking to outside the courts for equitable justice, it should be borne in mind that alternatives that are grounded in aboriginal community justice present unique challenges, ranging from funding to internal community dynamics. The recently implemented Attawapiskat program is just one of the newer alternative justice programs that is in a state of flux. In his study of the Sandy Lake, Indian Brook and the Attawapiskat programs, Clairmont (1996:149) found that the Attawapiskat program was suspended for over a year due to the local community's dispute with the provincial authorities over funding and resource allocation. It is, therefore, suggested that funding and bureaucratic factors will have a bearing on the future of the newly established community justice and healing initiatives.

Other challenges for aboriginal community justice involve internal factors whereby a certain degree of consensus, homogeneity and interdependence are critical (LaPrairie 1992). When dispensing justice, the success of community justice must be based on the principles of fairness and egalitarianism (Clairmont 1996). Clairmont suggests that differential rules for prominent community leaders will negatively impact upon community control and direction. For example, the community of Sandy Lake is currently under jeopardy over controversy about the disposition of a serious sexual assault case whereby a prominent Elder has been charged (Clairmont 144). The community is divided over whether the courts or alternative justice should adjudicate the case. According to Clairmont (147), other communities, for instance, Indian Brook and Attawapiskat have also shown "increasing evidence of significant socio-economic differences which provide a fertile soil for differential and biased justice." Clairmont adds that in recent surveys, community members have expressed "considerable caution concerning the prospects for a full-blown autonomous native justice system ...."
(147). The 1993 demise of the South Island Justice project (located in Vancouver Island) due to perceived inequities points out to the need for equity, accessibility and accountability in aboriginal community justice (147).

Of the well-established community justice ventures that are perceived as more successful in reducing recidivism rates and increasing victim satisfaction is the Hollow Water Healing Circle. This Manitoba program is one community-based justice paradigm that is well discussed by Ross (1992; 1996), Donohue (1997), Sinclair (1994) and Phelan (1998). These authors concur about the efficacy of this alternative justice program in dealing with aboriginal justice and healing issues. Equally worth consideration is that the criminal justice system itself is in the process of tangible reforms as suggested by Twinn and Dombro (1992). The proposed reforms may have a bearing on aboriginal victims' future confidence in our justice system.

To sum up this chapter then, despite the limitations of the study, the sources used give a complete picture of victims' ordeal with the justice system. In addition, the sources give a multitude of views of similar events leaving the reader to extract the truth. Of all the sources used, journal articles and special reports give the most balanced and a synthesized perspective about the needs of the individual and the community as they relate to implementing healing paths that aid in personal and collective empowerment.

By utilizing a range of sources for my thesis topic, I have attempted to deal with the limitations of each type of source. A review of literature will be presented next. The review will provide a background of Canadian residential schools. The background is a vital precursor for contextualizing the accounts of former pupils of residential schools. The
experiences of victims as they relate to their wounding, and their need to resolve their trauma through healing strategies will be the focus of the literature review.
Chapter Three

LITERATURE REVIEW

In this chapter, the rationale for the inception of Indian residential schools in Canada will be discussed. Central to the discussion is the ideology of inequality as it pertains to the keeper/kept dichotomous relationship. The mutually reinforcing role of the church and the state will be underscored. The church's vehement defence for its role will be highlighted given that church officials had a major say in the day-to-day affairs of those Indian children placed under their tutelage in residential schools.

Briefly, the Canadian system of Indian education was based on a modified American model. In Canada, three historical eras of Indian education unfolded (Assembly of First Nations (AFN) 1994). The three eras are: (a) the Assimilation Era --1850-1910, (b) the Segregation Era --1910-1951, and the Integration Era --1951-1972 respectively. In Canada, 80 residential schools were implemented across the country. According to the Royal Commission on Aboriginal Peoples (RCAP) (1996) statistics, the province of British Columbia had 26 residential schools, the province of Alberta had 20 residential schools, the province of Saskatchewan had 14 residential schools, the province of Manitoba had 10 residential schools, the province of Ontario had 13 residential schools and the province of Nova Scotia had just one residential school. Yukon and Northwest territories had 6 residential schools. Of the 80 residential schools, 44 were operated by the Roman Catholic Church (RC), 21 were operated by the Church of England (CE), 13 were operated by the United Church (UC) and 2 schools were operated by the Presbyterian Church (PR).

Lascelles (1990:97) indicates that in 1890, 1,022 aboriginal students were enrolled in Canadian Indian residential schools. This compares to the figure of 10,294 aboriginal
students who were enrolled in 1965. The attendance of students in both day and residential schools was 34,083 in 1980.

Government Policy

In Canada, the schooling of aboriginal children came under colonial control in 1867 when the British North America Act (BNA) was enacted (AFN 1994:13). Over the next few years, the control of Indian education was consolidated and finally centralized by the 1876 Indian Act (3). The ill-famed Indian Act has dictated successive federal policies regarding Indian education ranging from the policy of assimilation to the policy of integration. The assumption that a relationship of tutelage should govern the policy of federal control over Indian education has had 'ripple-like' effects, much as have any other colonialist assumptions.

Historically, Euro-Canadians justified control of native populations by using moral, cultural and biological/evolutionary reasons. One of the plausibly pragmatic ways of controlling native populations was through separate schools for Indians. According to Dyck (1991:25), the myth of "cultural and biological superiority is a by-product of the extraordinary economic and political ascendancy of Europe and the west from the late renaissance to the twentieth century." The author indicates that the racist assumption of European superiority took a variety of forms, not precluding the view that Indians were a doomed/vanishing race that was simply unsuitable for survival. According to Milloy (1999:27), "the rapid incursion of settlement and resource development left no time for a natural evolutionary course to be run." Milloy explains that government officials considered aboriginal populations as destined to die unless extraordinary measures were adopted to force a change in their conditions. This translated into "kill the Indian ... and save the man." (Milloy:27)
To Dyck (1991), the doctrine of Euro-Canadian superiority is much more than just a white fantasy. Over the years, it has become a created body of theory and practise that has legitimized the dominant society's search for appropriate solutions for the 'Indian problem'. According to Dyck (1991:25), the socially constructed theory of Indian inferiority provided the rationale for the unilateral assumption of control over indigenous populations. Christian education is just one example of unilateral control.

In Dyck's later work (1997a), he elaborates upon his explanations about the use of residential schooling as a self-proclaimed humanitarian approach for the good of the Indian. The supposedly humanitarian approach left much to be desired. It aimed to eliminate the Indian Identity. As well, it aimed to convert Indian land into private property (Dyck 1997a:340). In this way, aboriginal populations would be 'helped' in their successful assimilation into mainstream Canadian society.

The desire to seek appropriate humanitarian solutions for Indians can be best summed up as contradictory and rather condescending. Nowhere is the contradictory summation of the 'Indian problem' better put than by Canada's own Deputy Superintendent General of Indian Affairs, L. VanKoughnet in 1887 (Haig-Brown 1988:31). VanKoughnet pled with the then-leader of Canada, Right Honourable John A. MacDonald to bestow upon the poor Indian the white man's 'gift' of education and 'equal' opportunities.

Henceforth, the policy implemented had two objectives: Christian indoctrination and the inculcation of western civilization. These two objectives were considered 'gifts' that were simultaneously the 'white man's burden', and therefore, a 'duty' (Furniss 1994).
Partnership Role of the Church and the State

In Canada, the model for Canadian Indian residential schools was largely adopted from the American one. The recommendation for an American model came from the 1879 Davin Report. Furniss (1994:25) asserts that the American model was based on President Grant's 1869 policy of aggressive civilization. The American model operated either under the direction of the Bureau of Indian affairs or under contract with the local churches. The American model was unique because it avoided the appearance of sectarianism (DeJong 1993:73). Emphasis was placed on the civilization and acculturation of the 'red man' not with the idea that he would master knowledge but that "he might catch at least a glimpse of the white world." (Adam 1995:21)

Paradoxically, one of Nicholas Flood Davin's evaluations of pre-residential schooling was its ineffectiveness on the Indian child:

The experience of the United States is the same as our own .... Little can be done with him .... The child, again, who goes to a day school learns little .... (Haig-Brown 1988:30)

Davin's (30) concluding comment was that "... if anything is to be done with the Indian, we must catch him very young." Indian adults were just not redeemable besides being a hindrance to the process of civilization (Milloy 1999:26). Davin points out that adults taught very little, and the influence of the wigwam, superstition and helplessness were said to ensure that the child who attended day school learned little (Milloy:26). Davin adds that what little the Indian child learnt was soon forgotten, and that "his inherent aversion to toil was in no way combated." Vankoughnet concurs with Davin by claiming that Indian children became as depraved as their parents "notwithstanding all the instructions given [to] them at a day schools." (Milloy:26)
Indeed, the catching of children while very young became the norm. Dyck (1991:81) also states that special attention was given to the Indian child because it was recognized that it "might be too late to effect the desired changes with adults." Dyck expounds that separate schools were established both on reserves and in off-reserve locations where Indian children could be removed from what was considered the irreparably harmful influence of their parents. Charged with the responsibility of leading aboriginal children to civilized pursuits, schools, especially residential schools, sought to eliminate any trace of 'Indianness'. To Dyck, Canadian residential schools were in most respects a microcosm of the overall system of Indian administration.

The American model of Indian schooling might have largely paved the way for Canadian residential schools but Canada pursued a uniquely separate path. Christian morality and faith were to provide the foundations for building and developing character, and one of the then senior Departmental officials, Edgar Dewdney concluded that it was impossible to "erase an aboriginal mythology without providing ... spiritual training unhampered by any other influence." (Milloy 1999:37) Such statements provide the rationale for the partnership role of the church and the state.

Various churches appeared to aggressively 'sell' their philosophies about converting aboriginal children. They petitioned the government to remove children as young as six from their families because they perceived it was crucial to save them from the "degenerating influence of their home environment." (Milloy:27) To the federal government, the various religious denominations were ideal for the operation of Indian schools. In the past, they had proven their commitment to cost-effectively Christianize and civilize aboriginal communities (Furniss 1994:26).
Miller (1996:102) concurs with Furniss's assertions about the financial cost-effectiveness of maintaining the church and state partnership, for example, low operational costs of residential schools. Miller (102) states that the government's heavy reliance on the church was perceived to reduce staffing costs by "securing services at a rate of remuneration less than a teacher's qualifications, pedagogical and moral." The operational cost-efficiency factor alone appeared to persuade the government to employ church officials as keepers of residential schools.

With the advent of residential schools, the relationship between the church and the federal government solidified into a more sound partnership. Grant (1996:88), a former pupil of residential schools contends that in carrying out the role of a mutual partnership, the church and the state adhered to the principles of colonialism. She explains that both parties aimed for intrinsically compatible goals that were meant to undermine native aspirations.

Grant claims that neither the church nor the state was the lesser evil (1996:88). However, she claims that the church had a greater interest in colonizing aboriginal people. She explains that the church's enduring holy mission of saving Indian souls had hidden agendas of avarice and power. During the mission of soul saving, the church destroyed a part of aboriginal identity. Grant (88) states that the spiritual castigation was bound to happen in that the church was so "deeply entrenched ideologically that it was almost impossible not to do more harm than good."

In contrast to the church's mission, the federal government's mandate was inconsistently carried out. The government changed its policy from teaching Indians to cope with persons of European ancestry to "helping Indians become fully assimilated," as per the 1857 Gradual Civilization of the Indian Act (Grant 1996:92). Milloy (1999:32) asserts that the realpolitic
rationale for Indian education "was pacification, an indispensable element in the creation of conditions for the peaceful occupation of the west." Residential schooling was thus a vital tool for achieving the form of social control envisioned by the government.

Of interest is that in 1908 the Superintendent General of Indian Affairs, Frank Oliver was the only one to strike the theological foundation for Canadian Indian residential schools (Milloy 1999:28). Oliver (28) stated that "it seems strange that in the name of religion a system of education ... not only ignored but contradicted this command [of love and respect]. Except Oliver, the majority of officials in Indian Affairs viewed that the assimilation of aboriginal populations would be most "speedily and thoroughly accomplished by means of boarding and industrial schools." (28) Various policies and practises were implemented to ensure the objective of assimilation.

Although residential schools existed for nearly two centuries, the policies implementing the underlying philosophy of assimilation varied considerably depending on the prevailing political and social climates, including idiosyncrasies. There are three distinct periods in the history of residential schools in Canada, each employing a minor ideological variation on the underlying theme of assimilation:

Assimilation Era 1850-1910

Miller (1996:74) asserts that the rationale for the policy of assimilation was straightforward. After the 1830s when the aboriginal people in the eastern part of the colony were no longer viable commercial partners and military allies, "any expenditure upon them ... that they regarded as the symbol of their partnership to the Crown, was a loss to Britian." (75) Furthermore, "as agricultural settlement proceeded apace in British North America, roving bands of hunting-gathering Indians represented an impediment to the expansion of
sedentary agriculture and British America settlement." Miller claims that the Indian had to be removed through evangelization, education and agriculture which arguably form the tenets of assimilation. The more coercive methods of "euthanasia of savage communities" were deemed "inimical, expensive and politically dangerous." (75) Residential schooling, therefore, was to constitute the means for 'benign' assimilation.

The 1879 Davin Report formalized the federal government’s policy of assimilation, in addition to setting up the contractual arrangements between the state and the church (AFN 1994). Furniss (1994:26) indicates that with the creation of residential schooling, the federal government took the responsibility for the financial, legislative and bureaucratic matters while the churches took on the responsibility for the management and day-to-day affairs of Indian schools. According to Furniss (1994:26), this arrangement suited both parties. By contracting the responsibility for Indian education to churches, the federal government could significantly save money." (27) Furniss adds that religion "was a necessary part of the assimilation process", and the churches "took advantage of the apparatus of the state to advance their own form of religious colonization."

Boarding schools and industrial schools were the preferred means of assimilation in that they effectively separated and isolated aboriginal children from their cultures (AFN:14). However, the purpose of residential schools was to provide limited academic education to aboriginal children while preparing them for entrance into industrial schools. Like industrial schools, residential schools offered limited academic education with a significant portion of the day spent on religious chants and rituals.

Industrial schools were intended for older children between the ages of fourteen and eighteen (Furniss 1994; AFN 1994). At first, enrollment in such schools was limited to boys
who were taught trade skills such as shoemaking, carpentry and farming (Miller 1996). Minimal academic skills were provided. When girls attended industrial schools, they were taught domestic skills like sewing, cooking, baking and ironing (Miller 1996; Barman 1995; RCAP 1997). Conformity to traditional gender-specific tasks ensured separate spheres for males and females. The federal government attested to the success of imparting the gender-based skills. Residential schools were considered as tremendously successful whereby "young native women trained at these institutions ... are much sought after, as nurse maids, and general servants, and give great satisfaction to their employers." (York 1992:33)

As for the curriculum, Milloy (1999:35) claims that it "carried the seeds of European civilization." For example, in the 1896 Program of Studies, verses and prose that were to be memorized and recited contained "the highest moral and patriotic maxims." (36) The Program provided a six-standards course in ethics. In the first year, pupils were taught cleanliness, obedience, respect, order and neatness. In the second year, pupils were taught 'right and wrong', truth and proper appearance and behaviour. In the third year, pupils were taught the reasons for proper appearance and behaviour, as well as independence and self-respect. In the fourth and fifth years, pupils were taught industry, honesty, thrift, patriotism, self-maintenance, charity and pauperism. In the six and final year, pupils were taught how to confront the differences in "Indian and white life ... evils of Indian isolation, ... home and public duties, etc." (Milloy:36)

The Davin Report aggressively set out to what Milloy (36) considers "the resetting of the child's cultural clock from the savage seasonal round of hunting and gathering to the hourly and daily precision required by an industrial order ...." Childrens' school lives were, therefore, structured and regimented with the value of time heavily instilled. The constant
ticking of clocks and ringing of bells signified the success of residential schools in replacing the wigwam with the industrial order -- one of the perceptually vital tools of assimilation.

Segregation Era 1910-1951

By the early 1900s, it was discovered that the policy of assimilation was not working (AFN 1994). The AFN (15) asserts that assimilation was proving costly, and that "graduates of residential schooling appeared to fit into neither First Nations or Euro-Canadian communities." Besides, First Nations were encountering severe population decline due to disease and starvation. At the same time, Canada experienced a substantial increase in immigration to meet its need for labour. For these reasons, the policy of assimilation was re-evaluated to be replaced by the policy of segregation.

By the 1920s, all Indian schools were formally referred as residential schools (AFN 1994). The Department of Indian Affairs (DIA) and the church ardently took on the role of Christianizing and civilizing the Indian child separately thus adhering to what can be termed as the principle of 'separate and unequal'. The AFN asserts that native children were coerced into attending the separate schools under the threat of legal ramifications. York (1992:24) claims that by the 1940s, about 8,000 children were enrolled in residential schools across the country. Although during this period, the basic literacy requirement was extended to grade eight, academic curriculum became more ethnocentric (AFN). The result was a total ban on native languages and customs. Nothing else changed. High reliance on Indian labour continued, making residential schools a self-sustaining industry. Religious fervour continued, too.

York (1992:24) indicates that children expressed their resistance by leaving residential schools as fast as they could. In 1930, three quarters of students were enrolled in grades 1 to
3. Only three in every hundred students went past grade 6 (24). Indian leaders expressed their dissatisfaction with residential schools by passing resolutions. In 1931, one of the spokespersons for the League of Indians of Western Canada named Edward Ahenakew described the pitfalls of residential schooling in that they were trying to "make a white man out of an Indian." (York 1992:25). Ahenakew (25) stated that it was "much better to make our children into good Indians, for we are Indians in our prison and in our thinking." The protests did not change things.

Elsewhere in Canada, special reports were devised to critically examine the purpose of residential schools. The Young Report of 1943 on Indian education in Western Ontario was one document that recommended closure of Mt. Elgin Residential School (Graham 1997:39). The Report found that residential schools were used as orphanages. Based on this finding, the Report recommended that Mt. Elgin be replaced with a senior school that would give appropriate academic and vocational training. Enrollment in the new school would be voluntary "with a complete change of atmosphere so that Indian parents and children would want to attend the school." (39) The recommendations of the Young Report went unheeded as the school resumed its old practises.

It is of interest that some of the well-known aboriginal scholars attended residential schools during the segregation era. Knockwood (1992), Johnson (1988) and Grace (in Shorten 1991) are just a few of the scholars. They give their personal accounts of residential school experience. Knockwood (55-66) suggests that at Shubenacadie Residential School, a division of labour existed, for girls performed kitchen duties including cooking and baking, sewing uniforms and laundering. Boys maintained the furnace/boiler room, in addition to
performing strenuous farm work. However, the duties of cleaning school floors and knitting were not gender-specific.

In comparison, Johnson (1988) suggests that the religious indoctrination at Spanish Residential School was troubling. Johnson especially expresses concerns about confessional rituals. Johnson (55) recalls the confessional staff frequently came out of the chapel to summon the wicked by asking "any more sinners." One of the ill-reputed confessional staff, Father Richard was regarded as the searcher for sinners. If none of the boys voluntarily accepted his invitation to participate in the ritual of confession, he picked a few of them in a line-up by remarking "you come with me," (55), and so the confessional sessions continued endlessly.

In contrast to Johnson, Grace (Shorten 1991:45) mentions in detail about the harmful consequences of the ritual of 'silence'. Grace (45) describes the daily schedule at Blue Quills Residential School as getting up in silence, lining up for prayers in silence, eating breakfast in silence but it is not clear whether recreation or play time was spent in silence. Grace, however, suggests that the ritual of silence continued throughout the day. Perhaps this ritual was thought to be a part of religious penance and children were forced to observe it at all times.

The Integration Era 1951-1972

The period of integration reflected changes to the Indian Act in 1951. During the integration period, First Nations children were to attend the same schools as the rest of Canadian children. Education of all children was to be under the secular control of the provincial governments (AFN 1994:18). Although the provincial schools were better funded than the federal schools, the threat of assimilation was greater than ever (York 1992:25).
In those areas where provincial and territorial schools were not accessible to aboriginal communities, children continued to attend residential schools (AFN:18). According to the Department of Indian Affairs, as late as the 1960s, there were 60 church-controlled residential schools operating in Canada with an estimated student population of 10,000 in any given time (18). However, by the early 1970s, it was found that the policy of integration failed like its predecessors. Literacy results for aboriginal students paled in comparison to non-aboriginal students. As well, aboriginal peoples' discontent with the delivery of Indian education was simmering. The road to Indian control of their education was, therefore, beginning to be paved. In September 1970, Blue Quills in Alberta pioneered in taking control of its school with the local band responsible for its administration and the curriculum (York 1992:45). Other aboriginal schools in Canada have followed Blue Quill's lead. Band controlled schools are integrating culture and languages into academic work. Some communities have assumed control of their schools as a broad-base for land treaty negotiations. The Nisga'a peoples' success is just one example.

At this point, it is worth indicating that the tutelage policies governing residential schools created problems for the keepers. Miller (1996:121-41) suggests that, for the most part, the keepers generated their own difficulties. The author says that the operation and the administration of schools were a constant headache for both the church and the government. While the government struggled with fiscal crises and political turbulence, the church had to contend with factional rivalries. Caught in the middle were native children, who were subjected to inadequate facilities, mismanagement, sub-standard curriculum and unqualified staff (Barman 1995:64-69; RCAP 1997).
At the same time, it must be pointed out that the division of responsibilities between the church and the federal government was not always clear-cut. At times, church authorities were forced to look for resources to supplement the per capita based funding provided by the federal government. Emmanuel College, one of the less rigid institutions faced this problem although "the school adopted decidedly less strict practises in its treatment of Indian boys and girls than federal officials would have preferred." (Dyck 1997b:24) Overall, the per capita financing system proved counterproductive (Miller 1996:127). Miller (127) elucidates that by shifting some of the financial burden to school children, residential schools became "more unattractive and, therefore, less economical."

Not surprisingly, the kept, the former 'recruits' of Indian schooling, have frequently given a scathing critique of residential schools. Among their concise epithets for residential schools, 'hell-holes', 'dungeons of darkness', 'institutionalized pedophilia', and 'total institutions' stand out. The profound public outrage of victims surfaced in the late 1980s. Since then, public and independent organizations like the Royal Commission on Aboriginal Peoples (1997; 1993) and the Assembly of First Nations (1994) have validated the concerns of aboriginal communities. They have found evidence that residential schools functioned as highly controlled environments where abuse and excessive discipline were all too common. Sexual abuse in particular went unreported, undetected and undeterred, as a result of institutional and legal constraints. The legacy of abuse is broken spirits, and a people culturally displaced and personally alienated. So, residential schools succeeded in the marginalization of a group of people who were considered incapable of looking after their own interests.
Many of the expressions of anger and pain from former pupils have been directed at the Catholic-run schools. The response of the church is twofold. On the one hand, the church argues that the exercises of coercion and excessive discipline were a sign of the times. On the other hand, the church argues that the missionaries' dedication and commitment for the good of the natives amidst a harsh physical environment must not go unthanked (Lascelles 1992).

Thomas Lascelles, an oblate missionary of a high clerical ranking vehemently defends the church. In his unpublished document, he offers an apologist stance by saying that in "in retrospect, a flexible approach to native languages and cultures would have been a more humane, wiser approach" (85). Nonetheless, his apology is short-lived. He reverts to the self-sacrifice and hardships that missionaries endured. This only defeats his humanitarian stance.

Lascelles (1992) acknowledges abuse in residential schools. However, he uses the 'rotten apply theory' to evade collective responsibility of the church:

Allowances can be made for the missionaries' good intentions, for differences between one missionary and another .... (4)

By blaming the individual offender, Lascelles is not conceding the larger problem of institutionalized abuse.

The Canadian Conference of Catholic Bishops (1995:15) holds a similar position as Lascelles's (1992). It argues that the church spread the prevailing ideas on civilization. As well, it argues that the church only carried out its 'holy duty' of imparting religious instruction in good faith and with a deep commitment. Of late, the diocese has apologized for alienating and inflicting suffering and pain on former pupils of residential schools. The
same church wants to revive native spirituality, for in contemporary times it views western civilization as materialistic. For some survivors, the public apology and reconciliation may be 'too little, too late'.

For the survivors of Canadian Indian schooling, the irony of residential schools (see Miller 1987) is evident. Today, a number of former pupils have become accomplished scholars and leaders who are spearheading autonomy movements. Control of Indian education is a strong goal today, thanks to the ill-conceived 1969 White Paper that only helped in mobilizing pan-Indian support for aboriginal issues like maintaining distinct identity and autonomy (Kallen 1995). The White Paper is perhaps one of the most controversial proposals, which strongly advocated assimilation of aboriginal population in the hopes of doing away with their ancestral rights, including land and distinct cultural rights. In short, the White Paper proposed that aboriginal populations be treated like the rest of Canadians, disregarding their rights to land, resources, and political and cultural distinctiveness.

To sum up this chapter then, the underlying assumption of European superiority, and the social doctrine of tutelage meant that the administration of Indian education in Canada during the various historical periods was based on misguided and misplaced benevolence. In many respects, the meticulous and systematic planning of Indian schooling was rooted in an ethnocentric vision, which guided in the forging of a rigid and perhaps an irrelevant curriculum. Henceforth, each successive colonial policy, from segregation to integration failed. This suggests the self-defeating nature of colonialism.

Although literature shows that the church and the state played a mutual partnership role, the church had its own ulterior motives that the state implicitly supported. In its effort to
carry out its own mandate, the church can be regarded as more actively engaged in the aggressive conversion of Indian people to the dominant society's standards. However, both the church and the state fostered a pervasive ideology of inequality in total institutions, where abuse was all too frequently a symptom of power imbalances and hierarchies.

At the time, the federal government appeared to lack political, social and legal tools to deal with institutional abuse due to budgetary cuts, rivalries and lack of binding contractual agreements (Miller 1996). This was also the case for non-aboriginal institutions for the disabled, and the like. The Jericho Hill School for the disabled and the Mount Cashel Orphanage are just two instances among a myriad of others. The predominantly Euro-Canadian students housed in these institutions may not have been subjected to ethnocentrism but studies show that they were subjected to physical and sexual abuse (Berger 1995).

As victims of sexual abuse in residential schools publicly came forward to disclose their abuse, they discovered that they must heal. The road to healing is a multidimensional one. Individuals and communities have chosen the paths that work the best for them. In the following chapter, I will present stories of survivors of sexual abuse in residential schools, and their attempts to use various cultural and western models to heal themselves.
Chapter Four

STORIES OF SEXUAL ABUSE: IMPLICATIONS FOR HEALING

In this chapter, survivors' stories of the impact of sexual abuse in Canadian Indian residential schools will be discussed. Survivors' stories will be compared and contrasted as they relate to their pain, guilt and shame, and a multitude of social pathologies. Survivors have shared their feelings about institutional abuse mainly through what they deem as culturally appropriate ways, namely Talking Circles, Healing Circles, cultural ceremonies and rituals. In doing so, they have adopted healing strategies or therapies that are consistent to their needs. By embracing healing principles, survivors have shown that the goals of personal and collective healing are attainable. They have also shown that knowledge about their sense of their cultural and individual selves is crucial for dealing with the healing path that goes hand-in-hand with justice issues.

Healing from the trauma of sexual abuse is just not about physical wellness. As such the scientific model of recovery and wellness does not adequately address the multidimensional aspects of healing. For my thesis, the Assembly of First Nations' (AFN 1994) integrated definition of healing is used. To the AFN, healing is about maintaining spiritual, mental, emotional and physical wellness (190). In comparison, Hill (1995) suggests that healing of the soul/spirit is at the heart of recovery and wellness. Hill (97) asserts that healing is about recovering from the shame and guilt caused by the trauma of sexual abuse, and "ongoing recovery is about empowerment -- the ability to feel power and take action."

Survivors have chosen healing strategies or therapeutic approaches which reflect either contemporary aboriginal principles or western principles, or they reflect the blending of
aboriginal principles with western ones. This indicates that the medical metaphor of healing is by no means limited to aboriginal people, but is also widely attested in new age literature, as well as some mainstream medical literature.

Before proceeding onto the healing journeys, a discussion of residential schools as 'total institutions' is necessary. Such a discussion will give a background of how the physical and social environments of total institutions are conducive to abuse. Goffman (1990:5-6) asserts that the central feature of all total institutions can be described as a breakdown of the barriers separating the three spheres of life: sleep, play and work. The distinguishing characteristics are that all aspects of life are conducted under the same roof and under a single authority. Each phase of a member's daily activity is carried on in the immediate company of a large group of others, all of whom are treated alike and required to do the same tasks together. All phases of the day's activities are tightly scheduled with explicit formal rules governing the entire sequence of activities. The various enforced activities are brought together into a single rational plan designed to fulfill the official aims of the institution. These distinguishing characteristics suggest that those 'inmates' housed in total institutions would be deprived of minimal privacy. The lack of privacy entails that 'inmates' would be forced to be unwilling observers of demeaning and humiliating situations, especially if sexual abuse is involved.

Upon extrapolating Goffman's analysis of total institutions, it appears that abuse of authority would thrive in tightly regimented settings of residential schools. Johnson's (1988) personal accounts of Indian schooling precisely fit Goffman's explanations. Johnson says that at his former school, called Spanish Residential School for Ojibway students, abuse of
authority was disguised as discipline. In his usual droll manner, he highlights institutional abuse throughout his book titled Indian School Days:

Our treatment implied that we were little better than felons or potential felons .... The eyes began their surveillance in the morning, watching .... The eyes were never at rest .... We were brought up by hand and boot, just like Pip ... when we were studying Great Expectations. (138)

Likewise, other former aboriginal students of Indian schooling talk about the ghastly nature of residential schools. They claim that the total institutionalization of residential schools left deep emotional and spiritual scars. One of the ex-pupils of Indian residential schools, Knockwood (1992) talks about the personal and collective experiences of survivors in her book titled Out of the Depths.

Knockwood attended the Shubenacadie Residential School in Nova Scotia for Micmac children. She conveys that the core experience of residential schooling was that of learning shame (93). Shame of a personal and a cultural identity is a recurrent theme in her story. Punishment was the main method of shaming, and many punishments have been described as sexual in nature or association. For instance, one of the boys was beaten because he resisted sexual interference (93).

The abused children learnt to dissociate from healthy sexual identity. As they emerged into adulthood, they were angry and confused. Healing was needed. Accordingly, relearning of culture and indigenous languages, and development of a strong sense of identity were encouraged. Knockwood (159) takes pride in saying that "she is a born again savage and that residential schools had her but not her children and grandchildren." With that, she passes the Talking Stick to the next person.
The story of Grace (in Shorten 1993) offers further congruent perspectives regarding Indian schooling. Grace is a Cree grandmother who at one time attended Blue Quills Residential School. Her story of Indian schooling is that of resistance to the harshness of Indian schools. As well, her story is about rediscovering cultural pride.

Like Knockwood (1992), Grace claims that punishments in residential schools were sexual in nature. Girls were stripped naked and strapped by the priest for what could be construed as petty crimes. The 'strip and strap' form of discipline was also experienced by children who attended schools elsewhere (Milloy 1999:296-7). It is presumed that punishments were not proportional to the alleged misconduct. Nor were they proper.

Grace's recollections of Blue Quilts Residential School indicate some further concrete examples of abuse of authority. In this aspect, the hypocrisy of the church is noteworthy. It linked sexuality with shame, yet the clergy did not abide by the rules that they enforced on native children. Grace speaks of the hypocrisy by commenting about specific incidents that were said to occur within the social environment of the institution:

Saturdays were a visiting day for the priest and he'd mingle with the girls. I saw him one time he was touching one girl between the legs, down here. I thought, gee, even brothers and sisters aren't allowed (emphasis mine) to do that. And then sometimes I would see this priest putting his hand under the breasts, you know. (Shorten 1993:45)

To Grace, those in authority did not live by example. Indeed, improper conduct of school staff was reported to the school authorities by some of the parents. Allegations were investigated, and dismissed for exaggerations. Alternatively, allegations were totally denied, including the complaint that two girls were 'corrected' for menstruating (47-48). So, the keepers of Indian children did not practise what they preached, and appeared to feel no shame in exhibiting what they castigated as immoral conduct.
Grant (1996:228) gives a unique perspective on sexual abuse by staff of residential schools. She states that during the placement of Indian children in residential schools, institutional staff became surrogate parents. As a result, she views sexual abuse in residential schools as incest. She elaborates that the trusted and obeyed live-in staff betrayed children's trust. Children were taught self-blame, and they lived with repressed shame (229).

In British Columbia, the Nuu-chah-nulth Tribal Council Study (1996) involving 110 respondents also indicates that sexual abuse was experienced and or witnessed by some of the former pupils of residential schools. The Nuu-chah-nulth Tribal Council (79) documented accounts of sexual abuse from one of the respondents named Ehattesaht. Ehattesaht points out the pain, shame, the loneliness and the fear due to sexual traumatization. Robert Cootes (80-84) accounts of sexual abuse at Alberni Indian Residential School have also been documented:

And there was, of course, Plint everybody knew Plint's voice. Oh, and there was this other guy named [name withheld] ... he went after young guys. He ratted on my brother, so I made him leave the school .... (81)

At times, Cootes heard students talk about the occurrence of abuse in return for extra privileges, money, candy or food (81). Although Cootes did not always see incidents of abuse, he alludes that sexual abuse in association with strappings and beatings did occur at his school.

Jaine's (1993) accounts of residential schools correspond to those already provided. Jaine has compiled personal accounts of individuals who attended various residential schools throughout Canada in her book titled Residential Schools: The Stolen Years. Throughout Jaine's book, ex-pupils of residential schools reveal their utmost personal thoughts and feelings through creative expression such as poetry and narratives that constitute first-hand
accounts. Of the many detailed narratives, Phil Fontaine's account stands out (51-68). Fontaine describes residential schooling as a painful, disempowering experience ridden with multifaceted abuse whose effects span many generations. He recalls his mother's recollections of the Fort Alexander Indian School experience. Fontaine says that his mother never talked about sexual abuse in Fort Alexander. He contends that although there was 'silence' around the issue of sexual abuse in schools, abuse did happen.

Fontaine says that not everyone who attended residential schools talks about negative experiences. There are those who regard residential schooling as beneficial. Their perspectives must be considered as valid and respected in accordance with the principles of healing (see AFN 1994:115). He explains that for the people who value their residential schooling, one should not take it away from them (Jaine 1993). He claims, however, for the majority, residential schools were 'hell-holes'. The latter group is hurting. Everyone has been affected, including the leaders.

To Fontaine (Jaine:66-7), healing occurs by sharing and disclosing (so that the shackles of the past are removed). He prefers holistic healing whereby peace occurs between the victim and the victimizer. His vision of the healing process is an inclusive one where all parties participate -- the victims, the offenders, the church and the federal government. The rationale for an all-inclusive healing model is that all parties were affected by the residential school experience, therefore, they must all heal.

According to Bell (1992:13), ever since Fontaine disclosed on national television his sexual abuse in an Indian residential school, a growing number of aboriginal people have come forward with their own disclosures. Bell says that it is difficult to say why the disclosures were not reported earlier. Probably the guilt, shame and fear of exposing a group
of people held in high esteem and considered trusted servants of God contributed towards non-reporting (13). Moreover, a generation ago, "the law invariably took the word of the men of the cloth or the word of women of habit over that of an Indian." (13)

Disclosures have resulted in national conferences such as "Residential Schools: Journey Towards Recovery and Wellness" held in Saskatoon during September, 1991. A similar conference was entitled "Time for Healing" held in James Bay during March of the same year. The nationwide workshops and healing conferences address and respond to the diverse healing needs of victims of sexual abuse in residential schools.

For its part, the state launched an independent body to inquire into residential school practises. Thereafter, the task of the well-publicized Royal Commission on Aboriginal Peoples (RCAP) (1997) was laid out. The Commission, headed by aboriginal and non-aboriginal persons, probed into residential school abuses by examining the personal testimonies of former pupils. Fontaine was just one of the witnesses. He gave his compelling testimony to the Commission on 22 April, 1992. It reads as follows:

In my case, I entered school when I was six. .... And I have a number of steps to take before I can consider myself a whole person .... I don't know how to describe it ... without shame, without any sense of embarrassment. (Chrisjohn and Young 1997:38)

Equally compelling are the testimonies of other survivors. On 27 May, 1992 Arthur Darren Durocher described his residential school experience to the Commission:

I was even molested ... and this was in my home town of Ile-a-la-Cross. I was sexually molested by a nun and I was abused. (37)

Many of the other witnesses' testimonies are about pain and anguish. All of them suggest that support groups and other healing initiatives are needed to deal with the aftermath of abuse.
Based on the extensive personal testimonies, the Commission found that native communities are ravaged with the cycle of sexual abuse, and that one is not able to halt the shocking epidemic of sexual abuse as long as past atrocities are buried, no matter how painful. The Commission concluded that the healing process begins by bringing those responsible to justice. At some level then, healing and justice go together.

York's (1992) knowledge of the community of Lytton, British Columbia reveals much about the justice and healing endeavours of survivors. York draws upon his personal interviews with residential school survivors, and suggests that survivors of residential schools share an experience of multifaceted abuse that is multigenerational. One of the former pupils interviewed is Charon Spinks, Number 473 (35). In a nutshell, Spinks describes her grief as akin to 'loss of an identity, a soul'.

Judge William Blair (in York 1992:29) said that "Lytton is a community in great pain because of the history of sexual abuse". When the band therapist, Jan Derrick More conducted seminars and counselling sessions with victims of abuse, she discovered that the most common reactions to sexual abuse were anger and denial (38). This changed over time. The 1988 sexual abuse trial of Derek Clarke indexed as \textit{R. v. Clarke} (CCC31478) brought sexual abuse into the spotlight. Clarke is a former dormitory supervisor at British Columbia's St. George Residential School administered by the Anglican Church. York asserts (38) that during the trial, many more people were willingly sharing their personal stories with the band therapist. In a sense, Clarke’s trial motivated survivors across the province to confront the reality of residential schools, and to heal.

Victims of sexual abuse made their feelings very public during the \textit{Clarke} trial (York 1992:28). They testified that as young boys, they were beaten or punished for not complying
with their former supervisor. Clarke's victims described personal tragedies that ravaged their lives. York (28) says that one of the victims claimed that "he was broken in all areas of his life" and that "all his dreams are just about shattered." The victim said to the court that he had nightmares for twenty-one years after he was molested. The nightmares did not end until he was able to talk about his sexual abuse. Thereafter, twenty-one years of pain, shame, guilt and hurt stopped, for he felt that the cycle was complete. At last, he felt like a free man.

In 1988, Clarke was given a sentence of twelve years by provincial court Judge Blair. Incidentally, Clarke was allegedly a victim of William Douglas, a Salvation Army captain (York 1992:29). This suggests that the crime of sexual abuse is cyclical making role reversals an unfortunate reality. The cyclical pattern of sexual abuse indicates a high correlation, not causation. It also indicates that sexual abuse is a learned behaviour although arguably not all those abused become abusers themselves. Conversely, not all abusers were ever abused. It is suggested, however, that in situations of authority, the crime of sexual abuse is about power and control.

The nationwide Residential School Study conducted by the AFN (1994) further illustrates the need to heal from the impact of sexual abuse in Indian schools. Research for the AFN was conducted by two psychologists who interviewed, in group sessions, thirteen former pupils of Indian residential schools (Miller 1996:333). The AFN suggest that although the sample size is small, the study does address "a significant dimension of residential school impact" (5). To the AFN "personal experiences are not somehow more truthful when numbers [numerical quantification] are attached to them (5). The other problem the study raises is the way sexual abuse has been assessed. In this regard, Miller (1996:334) states that "precise measurement will never be possible".
Responses from the individuals interviewed in the study were categorized into emotional, mental, spiritual, physical and sexual aspects. The study found that of those individuals who reported physical and sexual abuse, their coping mechanisms were alike in that they repressed the pain and the shame instilled by sexual abuse. Selective recall of events was reported recurrently. Many of those interviewed (52) said that they "coped unconsciously by blanking out incidents that were too painful." For some individuals, forgetting certain periods or episodes for prolonged lengths of time was common. There could be periods as long as four years of selective recall, as stated by one respondent:

My first three years there, it was just a blank, eh. And I remember certain things ... and that's where kind of my memory kind of stops for almost four years because like I forgot. (52-53)

The AFN explains that respondents who reported sexual violations say that they could not talk about their experiences because they closed themselves off emotionally and physically. Others denied or belittled their experiences as strategies of coping. Still others negated their experiences. According to the AFN (53), the result of having to cope with sexual violations was that people became silent about the events. They did not talk to anyone about their pain. It became a conscious decision to keep a lid on that part of their lives for fear they would not be believed, or because of the shame and embarrassment they felt.

In contrast to the silent victims, a few of the interviewees experienced profound anger due to their sexual victimization (102). Many became self-destructive. They questioned their own identities. One man who had been sexually abused by his grandmother before schooling was later abused by two of the male staff members of residential schools. Now, in his early forties, his greatest pain can be summed up as that of feeling alone and emotionally isolated.
In accordance with the responsibility to heal the self and the community, the AFN has implemented an integrated healing process that is embedded in contemporary aboriginal beliefs and values. The integrated healing process is sequential, elaborate and comprehensive, and specifically related to the findings of the residential school study. To the AFN, an effective healing process must integrate four aspects of the self: recognizing, remembering, resolving and reconnecting:

(a) The first stage -- recognizing begins when an individual realizes that he/she can no longer manage life, and that his/her way of life is destructive to the self and others. Recognition means making a commitment to change for the better;

(b) The second stage -- remembering begins when an individual begins to break the code of silence so that one does not suffer alone. This step involves reaching out to others with similar experiences, which entails acknowledging painful experiences, risk taking and a reasonable amount of trust;

(c) The third stage -- resolving begins with working through the grief and anger with the help of a respected elder. Individuals can also embark on resolving by participating in healing ceremonies, attending workshops, school reunions and/or any other initiatives that they are comfortable with. Resolving involves re-framing thoughts, beliefs and conceptions so that one can reconnect with him/herself and with others in meaningful and constructive ways. One's mastery of this stage can be assessed by feelings of empowerment: moving from victim stage to survivor stage;

(d) The fourth stage -- reconnecting begins with reconciling the past and present so that a whole person emerges. A reconnected person feels he/she is an important, and a contributing
member of the community. He/she has totally accepted his/her personal identity and is proud of his/her cultural heritage.

The AFN's rather exclusive form of categorization concurs with Hill's (1995:70) to a degree. To Hill, when a person of the church sexually abuses, spiritual abuse also takes place. She adds that when one combines sexual abuse with the shame and the secrecy, confusion results. Now we have emotional and mental abuse in addition to sexual, physical and spiritual abuse.

Hill's (1995) therapeutic technique blends western and traditional techniques whereby principles of the Sacred Tree are merged with Glasser's Reality Therapy. Her therapeutic technique involves talking through and remembering the trauma without dissociation and suppression. Individuals seeking therapy are to express their feelings no matter how emotional they get. Hill terms the free expression of feelings as 'letting it all out'. Clients are then asked to label what they feel, for instance, shame, anger, hurt and loneliness. The goal is to learn with guidance from a caring counsellor the techniques for reclaiming personal power, together with the setting of boundaries. In this way, clients may not re-traumatize their inner self. Upon reclaiming their lost identity, individuals feel that they are accepted, believe and are believed. They also feel that they have a secure and meaningful existence (see Figure 1.1).

Caution is required by those actively seeking healing, or engaged in the healing process. Irrespective of whom an individual chooses to participate as his/her therapist, healers must have healed themselves, first (Ricks 1991). A modified version is diagrammatically presented as Figure 1.2
This is Ricks's Empowerment Training Model that addresses the power/control issues for healers/counsellors.

In considering the utility value of Ricks's model of healing, it is important to examine the model's assumptions about power and control issues. Rather than criticize the model as ethnocentric, misguided and simplistic, one needs to examine the influence of colonialism aboriginal communities have faced. Child sexual abuse is a personal issue for many aboriginal counsellors who are drawn to the helping professions, and this mandates the need for differential training and healing for them (Ricks:114). However, Ricks (114) does not explain how the historical subordination of aboriginal people influences what may be considered an unhealthy therapeutic environment where even "clients misuse/abuse power and control." Nor is she clear as to how racial and cultural factors determine differential perspectives of power and control in therapeutic settings. It appears that Ricks does not explicitly acknowledge that the crime of sexual abuse, as it involves abuse of power, is a problem in both native and non-native communities. In this regard, research by Mathews (1995) provides some clear perspectives about the prevalence of abuse of power across race, gender and class distinctions. Nevertheless, Ricks provides an informative model for training healers. In essence, the modified model of empowerment training should apply to healers/counsellors from all racial backgrounds.

In concluding this chapter then, victims of sexual abuse in residential schools recall the horrors of total institutions. They recall how their abuse traumatized their inner self. The common reactions to sexual abuse are shame, pain, guilt, anger, denial, forgetfulness, hurt, repression, dissociation and distortion of actual events
As demonstrated by the AFN study, victims have boldly taken steps to resolve their trauma by taking the responsibility to heal on an individual and community level. It can be said that the process of healing is finding meaning for many. As victims move forward towards becoming fully functioning individuals/survivors, they are also pursuing justice for the wrongs done to them. They may opt for traditional justice or the Euro-Canadian justice system, or both. Their ordeal with Euro-Canadian justice is worth discussing as it exemplifies the problems they perceive with a foreign way of dispensing justice. The next chapter discusses the issues that arise as criminal and civil court proceedings are invoked. Of the many cases brought to the attention of the courts, the R. v. O’ Connor criminal case and the Blackwater et al v. Plint et al (1998) class-action civil lawsuit launched in British Columbia have been the most well-documented. These two cases may just make legal history, aside from re-defining native-white relations.
Chapter Five

LEGAL ADJUDICATION

In the previous chapter, I have described the literature in which victims of sexual abuse in Canadian Indian Residential Schools have poignantly discussed the multifaceted trauma they have had to deal with. In this regard, their healing needs have been extensively discussed. In addition to their need to heal, they have found it necessary to formally ask for justice.

Countrywide, concern about justice issues was catalyzed in the late 1980s, during the course of police investigations into allegations of sexual abuse in reserve communities (Furniss 1994). Thereafter, the Assembly of First Nations (AFN), British Columbia First Nations Summit, and many other local and pan-Canadian aboriginal organizations endorsed the Royal Canadian Mounted Police's (RCMP) province-by-province probe into allegations of sexual abuse by church officials.

In Canada, the only formal avenues for seeking justice are our criminal and civil courts. Consequently, victims have invoked criminal and civil adjudication processes. In doing so, they discovered unforeseen and periodic insurmountable hardships. Victims find that the Canadian legal system does not do justice to them. This is mainly because they do not have the same legal status as the accused, and they often find themselves re-victimized by the adjudication processes.

In a court of law, the legal principles and rights called substantive law govern criminal trials. The Canadian Criminal Code and the Charter lay the foundations of substantive law.
Substantive law may unfavourably impact upon victims by inadvertently creating conditions of secondary trauma, and by putting the onus upon victims to substantiate their victimization.

This chapter will be divided into two sections. The first section will deal with the experiences of victims of sexual abuse in our criminal courts. The ordeal of the central victim known under the pseudonym Stella Bonnett in the O'Connor criminal case will be highlighted. In the second section of this chapter, victims' experiences in the Blackwater et al v. Plint et al (1998) class action civil lawsuit will be highlighted.

(a) Criminal Courts

In order to understand criminal court litigation affecting the fate of the O'Connor case, one must first understand the theory and practise of contemporary Canadian criminal law and the Charter. In order to do so, one must begin with the theory behind substantive law, which comprises the principles of law and legal rights. In criminal courts, specific procedures of conduct are based on legal principles, for instance, the principle of equality. Consequently, this principle is enforced as a rule of law. One example is the rule that every Canadian is equal before and under the law, and therefore, every Canadian must be accorded equal protection of the law, as per provisions 15 and 28 of the Charter. Another example is the reasonable guarantee of life, liberty and security to every citizen, as mandated by provision 7 of the Charter.

Other rules of law are based on legal rights such as the right of the defendant to a fair trial that applies to all categories of criminal cases. Section 650 of the Canadian Criminal Code underscores this right. The right to cross-examine the witness is another example of a legal right. Legal rights are meant to balance the defendant's rights with those of the state. By balancing rights, a fair trial for the accused may be granted. In the adjudication process, the
balancing of rights for the accused and the state can translate into a heavy burden for the victim.

Having introduced the workings of substantive law, the application of the Canadian Criminal Code to the offence of sexual abuse will be made. Wherever possible, relevance of various Criminal Code provisions will be made to the O'Connor case.

The Criminal Code

The provisions of the Criminal Code governing sexual offences are numerous, and they are periodically updated or repealed. A few provisions have been selected for their applicability to the landmark O'Connor sexual abuse case, including sections 135, 143, 150, 265, 271, 273 and 276. Other applicable provisions are sections 603 and 650.

Briefly, past laws like sections 135 and 143 involved common law definitions of sexual offences. These two Criminal Code provisions were repealed in 1985, but they were applied retroactively to the O'Connor case. This is because the accused was charged for crimes committed before the consolidation of the Criminal Code took place. The current law, section 150 involves contemporary interpretations of sexual offences. It basically deals with cut and dry issues of consent, example the minimum age of consent. Section 265 deals with mitigating circumstances surrounding consent such as position of authority and threats that may invoke fear. Threats and fear may induce forced consent and/or submission. Section 271 defines the meaning of consent in indictable offences, and illustrates what constitutes 'abuse of process' or miscarriage of justice. Section 273 (1) explains in detail the meaning of consent. Section 276 stipulates that evidence inadmissible in courts must take into account the interests of justice, rights of the accused and the complainant, and the encouraging of reporting sexual offences. Both sections 273 and 276 now form sections 278.1 through
278.91, which deal with issues of production of records known as full disclosure. Originally, the law on full disclosure was found in the 1992 Bill C-42. Bill C-49 repealed the Criminal Code (excerpts from Bill C-49: Appendix 2). Section 603 particularly deals with the right of the accused to full answer and defence to ensure a fair trial. Section 650 sets out procedures governing criminal trials. This section stipulates, in so many words, that under the law of disclosure, the accused party has a Constitutional right to full answer and defence. Overall, the Criminal Code provisions governing criminal trials embrace the principle of 'presumption of innocence of the accused party', as per sub-section 11(d) of the Charter.

In law, the impact of disclosure laws on the victim of sexual abuse is noteworthy. The complainant/victim is obligated to produce personal records so that the accused can have a fair trial. For example, section 278.3.1 states that an accused party who seeks production of any record must apply to the judge. Delay in the production of records could impact the course of a criminal trial.

In a nutshell, in contemporary times, our criminal laws have laid out the meaning of sexual abuse by incorporating the various circumstances and positions surrounding consent. The law is clear in defining that those victims who submit to individuals in situations of power and trust are in effect not consenting. An instance of non-consent is a doctor-patient relationship where overt use of authority or force is not necessary (Boyle 1994:147). As well, the law is clear about the victim's and the defendant's rights and obligations.

Having discussed the relevance of the Criminal Code to the offence of sexual abuse, a discussion of the Charter's relevance to this crime is presented next (see Appendix 3, Part I attached).

The Canadian Charter: Constitutional Law
As a Constitutional legislation, the *Charter* succeeded our 1960s Bill of Rights.

Following the Front de Liberation du Quebec 1970s crises in Quebec and the resultant suspension of human rights and civil liberties, as per the *War Measures Act*, Canada began to actively explore enlightening visions for sustaining human rights and civil liberties. In 1982, the *Charter* was entrenched to fulfill the visions. It aims to safeguard the rights of the accused, the complainant, and the rights of the state. In practise, however, judges use their discretion in interpreting the *Charter* whereby greater protection is accorded to criminal suspects than victims (Knopff and Morton 1992). For the accused, the *Charter's* safeguards translate into procedural fairness at its best. In this way, no accused person should be convicted of a crime he/she did not commit (Twin and Dombro 1991). At the same time, no one convicted of a crime may be disproportionately punished.

For the purposes of an analysis of the *O'Connor* case, the provisions of the *Charter* most relevant are sections 1, 7, 15, 28, and the remedying section 24. Briefly, sections 1 and 7 guarantee the fundamental human rights and freedoms in a democracy in accordance with the principles of justice. Section 15 (1) mentions an individual's equality right before and under the law. Section 28 extends this right to men and women. Finally, section 24 permits an individual to substantiate that his/her fundamental rights were denied. Should this be the case, appropriate legal remedies may be warranted. Constitutional law requires that a court of competent jurisdiction decide legal remedies.

As a necessary adjunct to criminal law, the *Charter* bestows upon the accused the right to full answer and defence, which ascertains a fair trial. The accused is guaranteed full protection of the law, as per sections 7 through 15 of the *Charter*. In addition to the guarantee of full protection of the law, the accused party's rights must be balanced with those...
of the state. In criminal courts, the rhetoric of 'balancing of competing rights to uphold judicial integrity' has the effect of undermining the victim's rights (R. v. O'Connor (1995) File No. 24114 S.C.C.) especially in the area of privacy. Simply put, the victim's rights may be compromised in the process of balancing the state's rights with the rights of the accused.

At other times, what may be considered the 'elusive' community's sense of fair play and decency clause is invoked to defend the Charter rights of the accused. In this sense, the Charter dictates that unusual treatment or punishment be avoided. To do so would violate community norms of justice. Given the multicultural fabric of Canadian society, one does not conclusively know what community's sense of justice is at play. Nor does one know what community can be branded as 'good for every one'. One can suspect, however, that hegemony works in deciding the majority's sense of justice and fair play.

Having generally discussed the theory and practise behind the Criminal Code and the Charter, the differential impact of substantive law will be addressed using specifics of the landmark O'Connor case. The O'Connor criminal case has sparked much interest from aboriginal and non-aboriginal scholars, and aboriginal organizations and individuals. The different groups came together for a common cause. Quickly, the O'Connor trial became a social battleground for combating race and gender-based inequities. The fact that this case echoed past injustices to aboriginal peoples merely intensified the social war. An in-depth analysis of the O'Connor case is in order. Before this is done, a brief background of the case will be given.

Background

The O'Connor criminal case was launched in the beginning of this decade by former students of St. Joseph's Mission Residential School located near Williams Lake in British
Columbia. In 1991, a total of four complainants officially charged former principal Hubert O'Connor with two counts of rape and two counts of indecent assault. Substantial evidence existed for charges to proceed on to our criminal courts. The central victim, Stella, extensively testified in court against the former bishop for sexual abuse allegedly dating back over 30 years. Court proceedings spanned about a decade, and could have continued indefinitely into the millennium.

The *R. v. O'Connor* case chronology can be summarized as follows: In June 1992, the case went to a trial in the British Columbia Supreme Court (File No. 2569 CC920617 B.C.S.C.). Numerous appeals were filed both by the accused as well as by the central complainant. A major appeal was filed in the British Columbia Court of Appeal in 1994 by the central complainant regarding self-disclosure (File No. 702 CA016527 B.C.C.A. March 1994; 89 C.C.C. (3d) 209 at 132). Another major appeal was filed by her in the Supreme Court of Canada in 1995, again regarding self-disclosure (File No. 24114 DRS 96-00053 S.C.C.; [1995] 4 S.C.R. 411; [1995] S.C.J. No. 98. The Supreme Court ordered a new trial. Accordingly, a new trial took place in 1996 (File No. 1663 CC920617 B.C.S.C.). In 1998, the British Columbia Court of Appeal adjudicated regarding the issue of vitiated consent, and ruled that the victim did not consent thus overturning the trial judge's decision (File No. CA022299 B.C.C.A. March 24, 1998). A third trial was ordered.

Diagrammatically, the *O'Connor* case history summary is presented as follows:

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*R. v. O'Connor* Criminal Case

After formal charges against former bishop Hubert O'Connor were laid in 1991, a trial was held in the British Columbia Supreme Court in 1992. During the trial, the accused put forth 'consensual sex' as part of his defence. His victim, Stella refuted the consent argument, however, she had to work within the strictures of a legal system. Thereafter, O'Connor's attorney Chris Considine asked the Crown to release all personal information pertinent to the victim. This was done to ascertain the defendant's right to a fair trial, which includes his right to cross-examine regarding the credibility of the complainant, as per section 650 of the Criminal Code. Tardiness of the Crown to comply with full disclosure requirement resulted in a Stay of Proceedings. The case could not resume until the requirements of full disclosure
were fully met. Appeal procedures were invoked to resolve consent and disclosure issues with the intent of reaching the final goal of justice.

The *O'Connor* case was built on three contentious aspects of adversarial fact-finding: consent, full disclosure and victim credibility. The three issues that arose profoundly impacted the delivery of justice for the victim. The issues address the specifics of the case, and will be discussed in their respective order.

Consent

This foremost issue of adversarial fact-finding in the 1992 *O'Connor* trial quickly created problems of interpretation that were significant enough to lengthen legal proceedings. Judge Wallace Oppal presided over the first section of the trial held in 1992 in the British Columbia Supreme Court. He was entrusted to find whether Stella consented to engaging in sexual acts with O'Connar. Substantiation for non-consent was shouldered by her. During her court testimony, she gave explicit reasons for not consenting to the sexual acts.

The line of questioning Stella faced was arguably humiliating and embarrassing. Crown Counsel repeatedly asked her the same questions using different angles to obtain the truth. Example, she was asked in more ways than one whether 'she wanted O'Connor to engage in the sexual acts'. When she recurrently indicated that the sexual acts were unwanted, she was asked 'why she did not do anything about it'. All along, lurid details were required in her answers. In the following testimony, she appears to be adamant, yet a little shaken perhaps by the blunt questions about 'her apparent lack of active resistance':

Q. Do you need some extra time?
A. No. No (after describing some details of the first offence when she was asked to take her clothes off). I was feeling very uncomfortable and even right now, I can smell this smell.
Q. What smell?

A. It was just this smell. It was like a really sharp smell, like body odour. Again, he still had his wiry, hairy face, really white body, some hair on his chest. Anyway, he forced himself on me ... and I was -- I was just lying there and I was really not, you know, not wanting that.

Q. Can you tell us what part of your body he forced his ...?

A. Well, right into .... He pushed himself on me.

Q. Did you want him to do that?

A. No. No.

Q. Did you agree to it?

A. No.

Q. Did you say anything to him or did he say anything to you?

A. Well, I know I just said, 'No ... like I wanted to get out of there'.

(After a few brief questions and answers)

Q. Let's just deal with what you remember from that particular occasion?

A. Okay

(After more questions -- this time about a bed and a towel)

Q. So did you consent or agree to have intercourse with him on that occasion?

A. No.

Q. Have you ever had intercourse with him prior to that occasion?

A. No.

Q. Why did you take off your clothes when he asked you to?
A. Well, for one I was afraid and ....

Q. Were there other reasons?

A. Well, for one he was -- to me, he was an authority figure and I was afraid when I said -- I was afraid -- I was afraid of a lot of things.

(After a few more questions mainly about her position with the Pipe Band.)

Q. One of the other things you said was your problem -- was something about an authority figure; what did you mean by that?

A. When I say 'authority figure', I mean someone who, you know, you trust and make decisions and ....

Q. What kind of decisions?

A. Well, in case of hiring, in case of looking after administrative stuff, even when we were going to school, we were taught to respect and obey.

Q. Who were you taught to respect and obey while you were going to school?

A. Well, the nuns and the brothers and the priests there.

Judging from the line of questioning pertaining to consent and resistance to sexual acts, one questions whether the rigorous test of proving Stella's innocence was actually meant not to hold her culpable for her predicament. Los (in Mohr and Roberts 1994) offers some valuable insights applicable to the O'Connor trial. She claims that in law, the resistance doctrine is so efficient a vehicle for screening out the simple rape and imposing blame that it leads to the question whether law reform aims to prevent humiliation and secondary trauma to the female victim (37).
After Stella explained the reasons for her lack of active resistance to O'Connor's transgressions, for instance, O'Connor's position in the church and his authority as senior staff, Crown Counsel in its wisdom engaged in other fact-finding tactics. Amidst Stella's continual discomfort with the increasingly personally intrusive questions, it appears that the courts relentlessly pursued their more important agenda of truth/fact-finding. This suggests that victims must bear the onerous task of undergoing the gruelling process of arriving at the adversarial sense of truth.

It is suggested that Stella's experience with the adversarial fact-finding process is incompatible with aboriginal truth deduction process that incorporates individual and collective understandings of the event(s). In this aspect, the AFN (1994:5) define cultural truth as uninterrupted stories told individually and collectively, but for western justice culturally derived truth is irrelevant. The AFN implies that aboriginal witnesses should be able to tell their stories about sexual abuse in courts, without interruptions, until the whole story is told. Only then would the 'whole truth' behind abuse in residential schools emerge.

Scientific fact-finding/truth missions present other problems of their own making. Despite Stella's assertions of non-consensual sexual acts, Judge Oppal ruled in the 1992 trial that in her case, consent was vitiated by the exercise of authority. Contrary to section 265 (d) and section 273.1 (c) of the Criminal Code which explain that exercise of authority may suggest that a complainant is incapable of consenting to the sexual acts, the presiding judge ruled that Stella passively consented.

In the Reasons of Judgement, Judge Oppal looked at the 1992 O'Connor trial using the precedent-setting 1992 Norberg v. Wynrib case that indicates implied and communicated consent is vitiated if there exists "a significant power imbalance in the relationship to make
real consent impossible." (Harvey and Dauns 1993:125-26). Therefore, power imbalances were laid out as the criteria for establishing passive consent in the 1992 Connor trial.

In the final analysis, the issue of consent was not successfully resolved during the 1992 trial despite Stella's lucid as well as consistent statements regarding her non-consent. Thereafter, the British Columbia Court of Appeal (B.C.J. No. 649 CA022299 24 March 1998) ruled that the "trial judge erred in failing to resolve the issue of actual consent, and in basing his decision on the assumption that the exercise of authority vitiated any consent ...." As part of it Disposition, the British Columbia Court of Appeal concluded that the trial judge was wrong in concluding that consent was mitigated by the exercise of authority. This court indicated that evidence existed to support that the victim did not consent to have intercourse with the appellant.

To recapitulate the provincial Appeal Court's position: the exercise of authority constitutes a circumstance for only explaining the victim's lack of resistance, as well as explaining her submission to authority. The provincial appeal court has, therefore, interpreted that the relationship between 'vitiated consent' and 'submission to authority' must not be simplified. In rendering its judgement, the appeal court has perhaps offered a more concise meaning of consent.

Stella's position that there was absolutely no consent on her part is upheld by the appeal court. In a way, the appeal court validated that she 'submitted' to the former bishop's demands because of her historical and personal circumstances. O'Conner's guilt in the eyes of those interested in ensuring that justice prevails reverberated.

Full Disclosure
Another aspect of adversarial fact-finding, namely full disclosure, was comparably difficult for Stella. When British Columbia Supreme Court Judge Thackray took over the adjudication of the 1992 trial from Judge Oppal, he asked the two Crown prosecutors -- Wendy Harvey and Greg Jones to divulge all records in the interests of a fair trial for O'Connor, as per sections 278.1 through 278.9 of the Criminal Code. The two prosecutors were unable to promptly procure all information about Stella. Hence, they were unable to fulfill the conditions of full disclosure in a timely manner. As a response to the delay, Judge Thackray entered a Stay of Proceedings. The Stay was based on the 1991 *R. v. Stinchcombe* case. Judge Thackray established that the lack of full disclosure on Stella's defence team's part could result in the abuse of process. Abuse of process is a legal term worth discussing as it profoundly impacted the O'Connor case.

**Abuse of process**

Abuse of process is meant to ensure that the state dispenses justice in a fair and an equitable manner. Balancing the rights of the accused/defendant with those of the state is paramount to an assurance that abuse of process does not occur. In the O'Connor trial, abuse of process was one of the critical issues raised by several judges. As the abuse of process principle was of much significance to the case, it will be further integrated into the analysis of the case.

In order for the courts to avoid the abuse of process principle (see section 271 of the Criminal Code), it was incumbent upon Stella to diligently and expeditiously comply with the legal requirement to fully disclose personal and private records held by third parties. Sections 278.1 through 278.9 of the Criminal Code define what constitute records and procedures the accused may employ for the release of relevant records. In the legal arena,
any relevant primary records held by third parties such as therapists, doctors, employers and schools must be disclosed to the courts. Section 650 of the Criminal Code outlines the three purposes of disclosure by the victim. First, disclosure may enable the courts to determine the credibility of the victim. Second, access to private records could lead to a better understanding as to what led the victim to proceed with a criminal trial, for instance, how therapeutic intervention may have influenced the victim's memory regarding the alleged offence. Third, the law must balance competing interests.

Given the law's position about disclosure, Judge Thackray (in the 1992 O'Connor trial) was not in a position to make exceptions in Stella's case. He concurred with interim Associate Chief Justice Campbell's Order to demand the names, addresses and telephone numbers of all those individuals involved in treating Stella for sexual abuse. The judge even ordered complete files, documents, notes, records, reports, tape and video recordings be provided to the courts.

Feldthusen (1996:543) raises objections to the full disclosure requirement of criminal courts. The author suggests that the divulging of private records including diaries, social worker activity logs and other records of a personal nature has the effect of curtailing the victim's right to privacy, liberty and security. In Bushby's view (1997), our legal system discriminates against certain groups thus denying true equality as stipulated in clause 15(1) of the Charter, and section 28.

Bushby (1997:170) somewhat concurs with Feldthusen's stance by suggesting that the O'Connor case study demonstrates the uninhibited disclosure of complainants' private lives just to promote the defendant's right to liberty. Both Bushby and Feldthusen suggest that in the interest of justice for the accused, irrelevant and very confidential information about the
victim can be publicly displayed. To Kelly (1997:179), disclosure "reflects a range of biased social myths under the guise of scientific fact-finding and medical evidence." The immediate potential costs to the victim are invasion of privacy and acute embarrassment.

Other reasons against the extensive reliance on primary records in sexual abuse cases include their potential to wrongfully discredit victims' accounts. This is because written records provided by the helping agencies may conflict with victims' oral testimonies. It is argued that the inconsistency between written and oral records could hamper justice.

In the O'Connor 1992 trial, the initial Stay declared by Judge Thackray resulted in substantial time delays before the Attorney General of British Columbia appointed special prosecutor Macaulay to examine the grounds of appeal. Macaulay did find reasonable grounds in a short period. He concluded that the courts were asking the Crown to release highly confidential and irrelevant information about Stella (Birnie1994). This struck an old chord, about a people's subordinate position, and how it reinforced the ideology of inequality. Across the nation, aboriginal groups voiced their outrage against collective historical injustice. Aboriginal groups and interest groups became more than ever resolute in overseeing justice for Stella, who had become a part of their psyche.

In 1994, the British Columbia Court of Appeal overturned the 1992 Stay of Proceedings. During the appeal process, the three presiding appeal court judges examined the more relevant issues like deciding whether a common law abuse of process took place, and whether subsections of the Charter were violated with respect to the principles of fundamental justice, namely section 7. After a detailed analysis, the judges concluded that unless non-disclosure was material in the sense that it impaired O'Connor's ability to make full answer and defence, a legal remedy under section 24 (1) of the Charter could counter the
question of abuse of process. The integrity of the court would be at risk only if the principles of fairness were violated. The court also concluded that the conduct of the Crown did not reach the threshold test necessary to establish abuse of process, nor did it adversely affect O'Connor's right to full answer and defence. Consequently, trial court Judge Thackray was found to err when declaring a Stay based on the common law doctrine of abuse of process.

In 1995, Canada's highest court, the Supreme Court of Canada, made further points of clarification about disclosure in the interests of fundamental justice. Basically this court concurred with the 1994 British Columbia Court of Appeal's verdict. O'Connor's appeal to squash a new trial was dismissed. To some of the interest groups, his legal maneuvers were self-defeating. At last, the wheels of justice were moving slowly for a new trial was ordered.

Thereafter, a new trial took place in the British Columbia Supreme Court in 1996. During this trial, the original charges of two counts of rape were reduced to one count due to doubts about Stella’s credibility. Presiding Judge Oppal dismissed one charge of rape "due to serious inconsistencies" (File No. CC920617 B.C.S.C. 25 July 1996) in Stella's evidence. The result of the 1996 trial was finally O'Connor's guilt on one count of indecent assault and one count of rape. O'Connor was sentenced to imprisonment time of just two years and nine months.

It appears that the outcome of the 1996 trial was affected by Stella's conflicting recall about some events. This sends the message that the issue of victim credibility also has strong implications for justice, and will be addressed next.

**Victim Credibility**

Apart from the consent and full disclosure requirements of adversarial fact-finding that have strong consequences for justice to victims of sexual abuse, the issue of victim
credibility also needs serious consideration. A considerable body of literature on criminal court proceedings points out that adult victims of childhood sexual abuse are relatively less likely to be believed (Freyd 1996; Roberts and Mohr, ed. 1994; Gunn and Minch 1988; Kelly 1997; and Feldthusen 1996). Bushby (1997:161) asserts that complainants with a mental illness may have a more difficult time in criminal courts as defence team(s) may raise the specter of their personal histories to undermine their credibility. Thus, those individuals who need the most protection of the law, including adult victims of childhood sexual abuse, may not be deemed believable.

In courts, victims are put through tedious, and one might add traumatic court testimonies, just to ascertain that they are consistently telling the truth. Those individuals who work in the therapeutic profession claim that the legal system puts victims through secondary victimization by insisting that their recall of events be accurate and consistent. Therapists who work with adult survivors of sexual abuse explain that victims' recall of events is distorted on many counts, due to trauma to their inner core. They suggest that more often than not, such victims experience symptoms of post-traumatic stress; in order to survive victims undergo an array of defence mechanisms that help them cope with their day-to-day lives. The result of the process of defence mechanisms is that much of their victimization is only partly conscious to their memories, or perhaps in fragments of memory that are difficult to access, integrate and recall accurately.

In some extreme cases, therapists have been held responsible for implanting memories of sexual abuse, or victims have been found to fabricate memories of sexual abuse. Williams (1994:1171) states that the best research indicates that only 4% to 8% of child sexual abuse reports are fictitious. Similarly, Freyd (1996:44) reports that in a study compiled by Judith
Herman and Emily Schatzow on the veracity of recovered memories among a group of 53 women, 39 women (74%) "were able to obtain confirmation of the sexual abuse from another source." Another 5 women (9%) indicated a strong likelihood of abuse. 6 women (11%) made no attempt to obtain corroborating evidence from other sources, and 3 women (6%) were unable to obtain corroborating evidence. There is no conclusive evidence that the 3 women fabricated their sexual victimization. In other studies, there is an indication that therapists can implant false memories into their [suggestible] clients (Freyd 1996:104). A therapist might speculate by saying "you have these symptoms because you were abused, even if you don't know it." (Yapko 1994:149). However, Pope and Brown (1996:72) assert that false memory syndrome is "a non-psychological term originated by a private foundation whose stated purpose is to support accused parents." Likewise, Murphy (1997:3) asserts that the American Psychiatric Association does not recognize false memory syndrome as a medical condition, and that "no studies or research exist to suggest that anyone suffers from it."

Murphy (1997) explains that nevertheless the false memory debate influences court cases depending on how aggressive the defence strategy. This does not mean that court decisions reflect a significant uniformity in the reasoning and in the context of analyzation of false memory issues (Murphy:1). For victims who provide corroborating evidence to the courts, their quest for justice does not become easier, for it appears that the problem of child sexual abuse has become a highly politicized matter. The false memory movement is at odds with the incest recovery movement (Pope and Brown 1996:3). Amidst the heated debates and controversies, an increase in litigation and formal complaints have emerged. Adults are suing those individuals who they claim to be their perpetrators, accused parents are suing
therapists, experts are suing other experts or professional organizations who disagree with them and most recently clients are suing therapists for harmful effects of implanting false memories (Pope and Brown:3).

Having considered the research on false memory syndrome, it is suggested by Pope and Brown (1996), that adult victims of child sexual abuse rarely fabricate their traumatization. They may have difficulty in remembering particularly if the accused is a close family member. Research by Bannister (1992) and Meiselman (1990) on the subject of victims' recall is perhaps insightful. These two therapists' work on adult survivors of child sexual abuse indicates that victims appear less than forthright and/or consistent during aggressive court testimonies because they have cognitively and emotionally learnt to dissociate from their trauma. Victims dissociate by suppressing, denying and detaching from painful events. An 'out of body' experience emerges as a result of suppression of their ego protecting mechanisms.

Dolan (1991:114) further explains that survivors of trauma get highly skilled in dissociation. They may exhibit signs of dissociation by appearing numb, spaced out, and in some cases they forget what they were talking about. As a result, they appear less credible. Extreme symptoms of dissociation are time distortions, memory lapses, depersonalization and blackouts. The restructuring of the cognitive and emotive aspects of the self is a remedy devised by Bannister and Meiselman. These two therapists strongly support the reconciliation of the therapeutic and legal professions whereby the notion of legal relevance and evidence must be weighed carefully, in order to avoid additional trauma to a victim.

Harvey and Dauns (1993) intimate that during witness/victim testimony sessions, a fragile balance be sought between what is asked, how it is asked, and why it is important. In this
way, the victim may not be needlessly traumatized. They recommend that Crown Counsel seeking more detail from a witness use memory aids like going through photographs, clothing, diaries and other records to refresh the memory of the complainant (18). For the record, the use of drawings as a form of memory aid was not allowed in the O'Connor case. One of the judges lacked confidence in the Crown's strategy to use drawings for strengthening Stella's testimony.

Harvey and Dauns (1993) also suggest ways of aiding in the complainant's recall by asking questions relating to remembering sensual stimuli, for instance, taste, touch and smell. However, recall triggered by sensory and environmental cues is not a guaranteed way to remember events accurately, caution Pope and Brown (1996). To Pope and Brown (59), recall is highly individual as "each person has a different capacity to store the memory, as well as unique abilities to forget and remember it." Dolan (1991) recommends healthier methods of dissociation that constitute survival mechanisms. How this could be done is yet unclear.

It appears that therapists who work on survivors of child sexual abuse occasionally offer conflicting theories about victim recall. They offer disparate theories about why victims appear inconsistent and forgetful about their responses to traumatic events. In this regard, Freyd (1996:11) asserts that when children are sexually abused by those adults they trust, betrayal trauma is born. In betrayal trauma cases, a logical expectation is cognitive information blockage. Simply put, inaccurate recall is a rational response to an irrational situation.

However, the information provided by the various therapists explains some of the recall problems noted in the O'Connor case. Inconsistencies in recall had on some counts worked
in favour of the accused. The lawyer for the accused, Considine contended that after so many years, and after some obvious problems Stella had in recalling the time and place of the occurrence of certain incidences, it would be appropriate for the court to acquit O'Connor. This did not happen. However, some of the charges against O'Connor were dropped due to what were perceived as serious inconsistencies in Stella's recollections.

Scholars specializing in legal jurisprudence have raised the concern that there is gender as well as racial bias in courts, particularly with respect to credibility issues. Research conducted by Kelly (1997), Bushby (1997), Feldberg (1997), Los (in Roberts and Mohr 1994) and Feldthusen (1996) is noteworthy. These legal scholars research on the systematic biases of courts suggests that hegemonic positions occur in legal jurisprudence. Hegemony perpetuates the status quo.

Evidence of blatant racism unfolds in Nahaneec's (in Robert and Mohr 1994) work. Nahaneec describes one northern Judge Bourassa's stance towards female Inuit victims. The judge is thought to display insensitivity, aside from pronounced racism. Nahanne (194) says that to this 'learned' judge, Inuit victims of sexual assault are less physically and psychologically traumatized than other (white) women as evident by his remarks "southern Canadian victims of major sexual assault suffer ... tears and psychological trauma ... for several years afterward." Explicit in this assumption is the racist notion that the crime of sexual assault is less traumatic for the northern, rural Inuit woman. This has a bearing on justice for victims with leniency to the offender as the norm.

Kelly (1997) offers similar explanations as Nahaneec (1994) in that she suggests that aboriginal women are more likely to be stereotyped as deserving victims. Kelly (191) adds that in courts when an interpretation of an event or events (s) challenge(s) the dominant
discourse, it is less likely to be honoured. Discourses that challenge the prevalent stereotypes are more likely to be dismissed by the hegemonic system as irrelevant or bad. As a result, the myths regarding who is to be perceived as a credible victim are perpetuated.

Nahanee's (1994) and Kelly's (1997) assertions about cultural insensitivity and stereotyping are parallel to those offered by Los (in Roberts and Mohr 1994:36-7). Los asserts that when a victim's experience of a sexual assault does not fit the stereotypical perception of the 'real victim' and the 'real sexual assault', it can be extremely traumatic and humiliating. She further asserts that reforms to the law do not automatically remove the blame and the stigma attached to the victim. Far from being neutral, the law remains a vehicle for expression of the dominant cultural. Even with tangible legislative reforms that endeavour to promote fairness, neutrality and equality, the law has failed to provide justice to those groups and individuals needing the most legal protection (Feldberg 1997).

Thus far then, our criminal and Constitutional laws impose on victims the burden of proof that they substantiate their status as victims. They must do this methodically by proving that they did not consent, in any way. If victims show that they may have 'appeared to consent', they must demonstrate they did so not of their own accord. Even when the courts are satisfied that in no way did they consent, given the particular circumstances, victims must still disclose to the courts everything about themselves in order to justify as credible persons who are worthy of justice. This connotes that reforms to law do not necessarily entitle victims to an easier passage to justice. Victims must recurrently go through tedious cross-examinations and a whole maze of scientific fact-finding missions that could ensnare them.

Henton and McCann (1995) claim that witnesses pursuing criminal litigation seldom go beyond the pre-trial stage. They are simply too fragile, frustrated or inconsistent in their
recollections to survive cross-examination by defence for the accused. Of those who must wade through the turbulent waters of justice, they quickly learn that the court drama is about 'winners and losers' who have nothing to do with direct responsibility to the victim (as extrapolated from Ross 1992).

What can be said then, in theory, all the supposedly progressive laws including the reformed disclosure laws as well as the 1982 Charter aim to address the social and legal inequities but in practise, the legal arena may be an ineffective tool for attaining justice for all. One recommendation (extrapolated from Harvey and Dauns 1993:18) that can be made is that the criminal courts give victims reasons for the importance of divulging details without inappropriately leading or misleading them (regarding the importance of detailed information). In this way, victims may not be traumatized inappropriately; it is a delicate balance (18). This is not to understate the existent problem of hegemonic practises in the legal arena, or the human component to court practises.

For Stella, after what seemed like an eternity, O'Connor was eventually convicted only of one indecent assault charge. This was later overturned and the rape charge reinstated. A third trial was to be held sometime after June 1998. At the time, the victim had enough of a foreign justice system. She waived her right to confidentiality of her identity, and publicly identified herself as Marilyn Belleau.

Belleau gave her concise perceptions of the criminal justice system to various newspapers. In her statements to The Victoria Times Colonist in July (Danard 1998), she stated that after a preliminary hearing and two trials, she had "enough of being victimized by the courts ... they [the courts] can be cold and calculating." One month earlier, she stated to The Province that the courts heard her story three times, and that she was unsure whether she "had the
strength or the energy to go through it all again." In the same month, Belleau and the other victims said that they were growing weary of what they considered a destructive court process (Todd 1998). She also said to this reporter she was frustrated that the courts dealt only with the facts, and that they never let her express to O'Connor the pain he had caused her. Belleau also gave statements to The Prince George Citizen in June 1998. She indicated to this news source that she has chosen the "Healing Circle as an alternative to proceeding further in the court system."

The Healing Circle gave Belleau the opportunity to confront O'Connor about the sexual victimization experienced over 30 years ago. She declared that community-based justice has given her the opportunity to directly express her hurts and pain, and to self-empower. Belleau stated to The Province "I don't feel that shame any more ...." (McLintock 1998)

O'Connor was said to voluntarily participate as the offender in the community-based Healing Circle at Alkali Lake. He personally apologized to Belleau during the first stage of the Healing Circle that began with a pipe ceremony. The second stage of the Healing Circle constituted a larger circle in which 38 members, comprising the victim's family and community leaders, talked about their pain experienced at residential schools. O'Connor apologized to each member. In the final stage, more members participated, including Bishop Jerry Wiesner of the Roman Catholic Church who gave written apologies along with O'Connor. The Circle closed with songs, drums and prayers.

When asked by a reporter, Todd (1998) from The Vancouver Sun regarding the sincerity of O'Connor's apology, Belleau stated that "she could not comment on his sincerity." However, she indicated that the apology meant a lot to her because it came from him personally. She further indicated that O'Connor was very uncomfortable during the
ceremony, and that it was "nice to get out of the control of the court system and O'Connor himself." In her view, O'Connor got away with nothing. "I would say he felt the fear and pain that natives have felt for all these years," claims Belleau. Healing was underway at least for one victim who has borne the invisible scars of a lengthy, an impersonal and stressful court ordeal.

In comparison to criminal court cases like the infamous O'Connor case, civil court cases do not require that victims bear the greater burden of fact-finding/truth. Rather, civil court litigation is premised upon the balance of probabilities. Nonetheless, the process of civil adjudication is somewhat an onerous one as shown in the well-publicized British Columbia Supreme Court case indexed as Blackwater et al v. Plint et al (1998) case (File # A960346 B.C.S.C. June 1998; 161 D.L.R. (4th) 538).

(b) Civil Courts

In addition to pursuing justice through the criminal courts, victims, their families and their communities are also pursuing justice through the civil courts. They claim that the offenders, the church and the federal government are jointly responsible for the rampant wrongful acts that were committed in residential schools. Sexual abuse is just one of the categories of wrongful acts for which victims hold the respective parties responsible. Civil justice is sought to address the wrongs.

For the most part, the immediate goal of civil adjudication is compensation after the courts decide the culpability of each party in monetary terms. Victims are finding that taking individuals and groups to civil court is a costly and a time consuming process. They are also finding that holding individuals and groups responsible for wrongful acts involves painful
experiences that may not offset the financial gain. For victims, compensation may mean justice, but it has little do with healing.

In legal terms, the culpability for any wrongful acts falls under the liability clauses of civil law. Dukelaw and Nuse (1991) define liability as an obligation or a responsibility in law to compensate due to a wrong that has occurred. In courts, any party's liability is classified as direct and/or vicarious liability.

Wiwchar (1998) explains that direct liability cases arise due to the harmful actions of the perpetrators, for instance, in situations when senior staff do nothing to stop the allegedly wrongful act(s) of subordinate staff. In contrast to direct liability, vicarious liability need only be causally linked to the wrongful acts. The legal definition of vicarious liability stands as an indirect or an imputed legal responsibility for acts of another, example the liability of an employer for the acts of an employee (Black 1990:1566). Layperson interpretations of vicarious liability have been given by Grindlay (1998) as well as by Wiwchar (1998). While Grindlay interprets vicarious liability as liability without fault, Wiwchar interprets this form of liability as an employer's responsibility, as a legal entity, for the criminal acts of its staff.

In Canada, each province makes its own judgement(s) about liability matters. Generally, when deciding liability in civil court, the litigation process unfolds in three distinct steps. In the first stage, issues of vicarious liability are decided. In the second stage, a variety of other liability issues, including direct liability are decided. In the third stage, damages are assessed.

Intent or mens rea is not an issue in liability cases. However, victim(s) must bear the burden of proof weighed against the balance of probabilities that the defendant did commit the alleged offence(s) (Berger 1995). Obvious difficulties emerge in civil litigation. John
(1997) sums them up as 'a two-edged sword'. Victims must relive their trauma amidst the possibility that the accused will deny any allegations of wrongdoing. Compensation could in turn be denied to victims.

Across Canada, a conservative estimate of 7,000 civil cases, inclusive of class-action liability suits have been launched against the church and the government (Tibbetts 1999). The British Columbia case against Plint is comparable to the 1.7 billion class-action suit launched against the federal government and the Anglican Church (Todd 1998). The latter suit may constitute more than 1000 former Mohawk students according to a lawyer named Russell Raikes. Stationed in London, Ontario, Raikes represents native clients.

Having briefly discussed the possible implications of direct and vicarious liability for the respective parties, the application of legal liability will be applied to the actual civil court case, Blackwater et al v. Plint et al (1998) involving multiple parties.

Background

The Blackwater et al v. Plint et al (1998) class-action suit was launched after the criminal conviction of Arthur Plint, a former dormitory supervisor at the Alberni Indian Residential School. In 1995, Justice Douglas Hogarth sentenced Plint to 11 years in prison for 18 counts of indecent assault of young Indian children institutionalized at Alberni (File No. 18047 B.C.S.C. 21 March 1995). Before Justice Hogarth concluded the sentence proceedings, he stated that Plint had a "mental inability to appreciate exactly what he has done, he cannot fathom the moral extent of the depravity ... (Reasons at Sentence by the Honourable Justice Hogarth File No. 18047). The judge suspected that Plint exhibited paedophilic tendencies coupled with occasional violence.
As Plint was serving his sentence for the crimes committed, his victims were seeking justice in civil courts. In 1998, 28 of the plaintiffs came forward to seek redress from all the parties implicated in their lawsuit namely Plint, his former employer (the United Church) and the federal government. The Plaintiffs contend that the three parties involved in the operations and the management of Alberni should compensate them for the wrongs they experienced at this school.

The Blackwater et al v. Plint et al (1998) class-action civil suit is still before the British Columbia Supreme Court. Judge Donald Brenner presides. He has decided on the responsibility aspect of each party. However, it will take some time before the judge will determine financial compensation to each of the plaintiffs. The specific issues and explanations for Judge Brenner's decisions will be addressed using the actual court case.


The Blackwater et al v. Plint et al (1998) case was scheduled for adjudication in three phases. During the first stage of the trial, many witnesses testified against Plint and Alberni Indian Residential School. One of the witnesses, Harry Wilson, gave graphic accounts of his alleged sexual victimization:

(The first time) he (Plint) took me in his room and pulled my pyjamas down and he raped me and not only that he took a plunger and shoved it up my bum. (Stonebanks 1998)

Wilson proceeded on with his court testimony to say that when he reported the incidents to the then principal Andrews, he was informed that he would be 'shipped out if he told anyone'. Wilson added that the former principal got mad and threw him out of his office. In his final statements, Wilson claimed that the incidents of victimization did not stop.
At the end of the first stage of the trial, Judge Brenner ruled vicarious liability jointly against the United Church and the federal government. Judge Brenner decided that both the church and the government are responsible for what was going on in the daily lives of students. Both parties are considered responsible for the reported ongoing problems.

Judge Brenner further went on to explain other ways the church holds legal accountability. One instance given is Principal Andrew's failure to act on complaints. He even gave threats of reprisal when aboriginal children and their families reported sexual improprieties by Plint. Judge Brenner inferred that the United Church hired the principal after approval from the federal government. Consequently, logic has it that the church and the federal government are responsible for Plint's sexual misconduct.

However, Judge Brenner's decision does not specify the quantum of liability against either the United Church or the federal government. Nor does his decision specify damages. This will be decided in the third stage of civil litigation process pending appeal(s). In total years of litigation, one could suggest that an indefinite period would elapse before this class action suit is amicably settled. This is because some key agenda scheduled for Phase II hearings are unresolved. Phase III and the actual settlement of monetary claims are indefinitely postponed, at least for now.

Judge Brenner made his ruling regarding vicarious liability using precedent setting cases. One of the cases cited by him was the vicarious liability case adjudicated by the British Columbia Court of Appeal in 1997 -- B. (P.A) v. The Children's Foundation (unreported) CA20650. In this court case, the Children's Foundation's was held responsible for one of their employee's sexual misconduct. Based on this case, Judge Brenner explained that in situations of sexual misconduct of staff/workers, there must be sufficient nexus or a
contractual bond (see Black 1990) between the duties of the employee and his/her misconduct. The judge added that the condition for sufficient nexus depends on the nature of power conferral, and that conferral of that "power will make probable the very wrong that occurred." This in no way implies that an employer wilfully provides an opportunity for abuse to occur. Nor does it imply that the sexual misconduct of an employee will benefit the employer in any way.

Judge Brenner then went on to give a lengthy explanation of the political history of the Christian denominations and the federal government. He stated that the United Church and the federal government demonstrated a sound partnership. For instance, the federal laws have long mandated that Parliament under principal (24) of S. 91 of the *British North America Act* (BNA) exercised its jurisdiction over Indian lands. Section 113, of the *Indian Act* explicitly authorized the government to establish schools for Indians, and to enter into agreements with religious organizations for the operation of Indian schools. The judge quoted the historical 'joint venture' nature of the relationship of the two parties dating back to 1940. At that time, the agreement of the two parties read as:

That the operation of Indian residential schools is carried on under an agreement entered into many years ago between the churches and the government ... the churches consider the contract to be in force .... (Judge Brenner in *Blackwater et al v. Plint et al* (1998) civil court case)

The 1940 agreement stipulates immediate consultation with the church with respect to changes in the conditions of contract. In his final statements, Judge Brenner ruled that the spirit of co-operation had an explicit purpose for the federal government: nation building while the church had its own self-serving goals of civilizing and Christianizing aboriginal people.
The response to Judge Brenner's ruling is a vehement denial by one of the parties implicated in the lawsuit, the United Church. According to the report to *The Toronto Star* (1998) by United Church spokesperson, Bill Phipps, the church is in the process of disputing the judge's decision regarding vicarious liability. The major ground for appeal is that the federal government assumed a much greater role in the lives of Indian children. Phipps contends that the government, therefore, must assume a higher legal liability.

Notwithstanding, the United Church seems to have accepted some responsibility for the deep social problems that residential schools have created. Ian Gunn (1998) of the British Broadcasting News (BBC) reports that the church has offered $250 million dollars to aboriginal communities. This monetary sum is perhaps comparable to the federal government's $350 million dollars Healing Package.

Whether the United Church will be successful in demonstrating to the higher courts that its liability role is minimal remains to be seen. In the meantime, Judge Brenner's decision stands. In monetary terms, Judge Brenner's ruling may significantly impact both parties.

The initial ruling by Judge Brenner does not come without criticism from mainstream society. Cheney, Matas and Roberts (1998) report that one lawyer, Freya Kristjanson, a civil litigation specialist from a Toronto firm, Borden and Elliott, remarked "the implications are enormous." She added that "there might never be girls' soccer in your neighbourhood again" and that "the Boy Scouts could fold." To Kristjanson, a joint liability for compensation suggests that a bad employee could put his/her employer out of business. She said that if Judge Brenner’s ruling is upheld by the Supreme Court of Canada, bad workers could bankrupt an organization, even an organization that is doing good.
The crux of Kristjanson's argument is that an employer's accountability must end at some point. She is asking that the church's accountability must be separated from the government's accountability. It is perhaps unreasonable of this lawyer to ask that a clear line be drawn to delineate each party's responsibility given that the relationship of the church and the state was historically a mutually beneficial one.

In concluding this chapter then, for criminal matters, substantial law has the effect of doing injustice to the victim. This is what may be summed up as the unintended consequences of our criminal and Constitutional laws or the Charter, one of which is the re-victimization of crime victims by our courts. Under the rubric of equality, the adversarial justice system compromises the fundamental rights of those vulnerable souls who have entrusted the state to dispense justice. This is a travesty. Nonetheless, victims like Belleau have mustered the courage to wade through the turbulent waters of adjudication in the hopes of achieving their end goals of personal and communal justice. However, justice may not smoothly pave the road for healing.

The solution for the victim's discontent with the adversarial justice processes does not lie in balancing the rights of the offender with those of the state, but in underscoring the rights of the victim. This may be a simplistic and a far-fetched solution given that the unintended consequences of any law cannot be rectified overnight. However, across the country, there exists an over-riding concern for safeguarding victims' rights. Advocacy groups and victims themselves are asking for reforms to our laws as a profound lack of confidence in litigation procedures pertaining to sexual abuse erupts. The need for reform also echoes in aboriginal women who have been victimized by aboriginal men.
In contrast to the process of criminal litigation, the process of civil litigation takes a somewhat different path. Civil litigation, it is claimed, is extremely costly, time consuming and personally taxing (Cheney 1998). The decision to settle out of court is highly unlikely given that out-of-court settlements could mean that the church and the government could evade their full share of commitment and responsibility (Cheney 1998).

On a more optimistic note, one might hope that public apologies for sexual abuse from the church and the federal government could facilitate their increasingly active role in claiming their responsibility. In no way does this mean that the parties concerned are willing to settle on monetary matters, rather, the settlement process has been stalled at least in the *Blackwater et al v. Plint et al* (1998) class-action case.

Monetary compensation for wrongful acts like pain and suffering is perhaps one important way to heal. However, some complainants in the *Blackwater et al v. Plint et al* (1998) lawsuit are claiming that it is not about money, for they will still bear the scars of residential schooling (Matas 1998). What victims are suggesting is that money will not erase the scars of abuse.

Conversely, public apologies in addition to statements of reconciliation by both the church and the federal government have made victims' lives harder. According to Barnsley (1998), victims must decide the appropriate route in a dizzying landscape of complex choices surrounding the compensation issue. Victims must decide to sue or not to sue; to negotiate and mediate or to litigate; and/or to litigate collectively or individually. Civil liability issues at times seem to be confused with personal issues. Criminal courts perhaps simply add another layer to the maze of confusion.
For aboriginal victims, the criminal and civil court processes, as mandated by criminal and Constitutional law suggest the cultural irrelevance of a foreign justice system. This has triggered the move towards the indigenization of justice. Therefore, the next chapter deals with justice measures taken to incorporate the cultural needs of aboriginal communities. The chapter also deals with the efficacy of various aboriginal justice initiatives. In the process, aboriginal justice initiatives have been weighed against western paradigms, especially as they move towards exploring justice as healing.

Finally, one point that is troubling is that much of the literature on court proceedings excludes the experiences of male victims of females. The accounts of Knockwood (1992) amply allege that some sisters and nuns took sadistic pleasure in the sexual molestation of young boys. The victims have formally not yet come forward to ask for justice suggesting that the cultural biases and myths about sex crimes being perpetrated by males will only flourish.
Chapter Six

ABORIGINAL JUSTICE

In chapter five, it was demonstrated that victims of sexual offences encounter difficulties with mainstream justice. To the victims, there exists an express concern that the procedures underlying substantive law could result in the exoneration of the offender. One only has to look at the O'Connor case to show that the offender stood a possibility of an acquittal had a mistrial been declared. Also, there existed the possibility that the Stay of Proceedings could be in effect for an indefinite period. Even upon the conviction of offenders, there is a concern that offenders may be given reduced sentences that do not accurately correspond to the seriousness of their offence(s). Or charges could be simply reduced in the first place, as was the case in the O'Connor trial where he was only convicted of two charges. He was given a sentence of over two years but served less than a year in jail. Later, he was acquitted of the lesser charge but the more serious charge of rape was reinstated. According to British Columbia's Assistant Deputy Attorney General Ernie Quantz, it would be hard to get a conviction on the final charge. In an interview with Douglas Todd of The Vancouver Sun on June 18, 1998, Quantz claims that "the more often you go back to trial the more difficult it is to get a conviction." All these possibilities translate into reduced accountability and responsibility of the offender to the victim. This may mean injustice to the victim.

Both the victims and their communities are continually exploring feasible alternatives that could divert individuals away from mainstream justice. In this way, healing and justice needs of individuals and communities would be addressed. Reforms to mainstream justice are put forth in a way conducive to the co-existence of aboriginal justice initiatives with Euro-Canadian justice processes. Given the co-existing nature of aboriginal justice
programs, they rarely take the form of autonomous justice initiatives. Instead, they take the form of complementary justice innovations that can accommodate aboriginal cultural values and traditions. The initial trial periods will test the long-term feasibility outlook of individual programs that are community-based. This is not to say that aboriginal community-based justice models work flawlessly. Community justice needs constant tailoring of the various models implemented, and to learn from mistakes.

Alternative models of justice strive to take into account the inherent philosophical differences that set them apart from adversarial justice. For the most part, aboriginal philosophy regarding crime and criminal behaviour conflicts with Euro-Canadian philosophy. Key areas of conflict are the ways of viewing criminal behaviour as it involves the determining of responsibility versus guilt, the processes of fact-finding and the manner of arriving at the truth.

First, aboriginal philosophy about crime centres on the demonstration of responsibility for the wrongdoing or harm. In contrast, Euro-Canadian philosophy on crime centres on the guilt determination process by assessing blame and retribution using standard rules. Hence, we have two systems of justice, one that is centred on guilt and another that is centred on responsibility.

Palys (1993), a researcher on aboriginal issues, explains why aboriginal philosophies about justice focus on taking responsibility for a crime. The author says that aboriginal people do not separate mens rea or intent to commit a crime from actus reas or the criminal act. If a person is not guilty of a crime, he/she can still feel responsible.

Ross's (1989) interpretations about aboriginal philosophy on criminal behaviour as they relate to offender responsibility are in concurrence with Palys (1993). Ross asserts that in
western tradition, a 'not guilty plea' does not mean that the accused is saying that 'he/she did not commit the crime'. Instead, the accused is saying that the onus is upon the Crown to prove guilt. It is the right of the accused to expect this. In aboriginal cultures, to deny what is perceived as a true allegation is seen as dishonesty, according to Judge Murray Sinclair (1994) who presides in a Manitoba provincial court. To Judge Sinclair, the dishonesty would perhaps be a repudiation of the community's standards of behaviour pertaining to a sense of responsibility and accountability. Donohue (1997) contends that the culturally derived sense of responsibility is not recognized by Euro-Canadian law thus necessitating a bridge to gap the cultural differences in the form of accommodative justice.

It is suggested that aboriginal perceptions regarding the Euro-Canadian guilt determination process are confounded by linguistic barriers. In this aspect, Griffiths and Patenaude (1988) find that aboriginal cultures, for example, the Inuit of the Northwest Territories, lack words corresponding to guilt. For the Inuit, the closest word for guilt is responsibility. If this is an accurate finding, then it is conceivable that a disproportionate number of guilty pleas arise, and so do court convictions.

The second area of discord between Euro-Canadian and aboriginal philosophy is the emphasis on the fact-finding process versus experiential knowledge. The mainstream justice process labels parties to the crime as winners and losers. In this respect, Sinclair (1994) questions the Euro-Canadian manner of dichotomizing people in courts whereby one party wins and the other loses. A game of wits is employed where confrontation and accusation are conventional legal styles of communication. Sinclair (1994) particularly questions the adversarial nature of court dynamics with the proficiency and expertise of legal representatives constituting the key factors in deciding who will win.
Ross (1996; 1994; 1992; 1989) offers insightful observations about aboriginal ways of viewing the wrongdoing. His observations are general statements drawn from a number of sources, and should not be understood as applicable to every indigenous community and individual. Despite this qualification, there are also important areas in which the experiences and attitudes of aboriginal people differ from those of Euro-Canadians, and it is the differences that are considered in my thesis.

Ross (1992) suggests that aboriginal ways depart from confrontational and accusatory 'court drama'. During his position as a prosecutor in Kenora, Northern Ontario, Ross observed that the Cree community's conformity to the cultural principles of non-interference and non-confrontation deflated court convictions. In other words, these two principles are so binding that the offender's chances of conviction are reduced. Cultural sanctions against direct accusatory remarks govern behaviour in court.

Ross (1989:3) vividly recounts one of the situations that needs a cultural interpretation in understanding the witness's behaviour in the private as well as the public spheres:

I recall one Indian woman who repeated her entire story of abuse to me in vivid detail before going into court and then asked me to do whatever I could to have ... her assailant(sent) to jail as long as possible.

Not surprisingly, the same witness appeared in court ten minutes later when she refused to say anything accusatory about the defendant. Ross inferred that the witness's conflicting public account of her assailant's behaviour was not connected with fear or embarrassment. He suspected that the conduct of the witness reflected the cultural ethic that it is wrong to say hostile, critical and angry statements in the presence of the accused. In western legal tradition, the apparent passivity of a witness may be construed as apathy or even disinterest.
The third area of discord is the manner of arriving at the truth. Sinclair (1994) asserts that in a courtroom, aboriginal world-view regarding truth exhibits profound cultural disparities. He asserts that in aboriginal cultures, truth is a relative term and never complete. When aboriginal witnesses testify in courts, the oath of courtroom truth, to tell nothing but the truth is illogical and meaningless. The aboriginal viewpoint would require the telling of the truth as one knows it without infringing upon the validity of another's version of the same event or situation.

To Sinclair (1994), it is rare to observe an aboriginal person asserting that another witness is lying or has gotten his/her facts wrong. So, aboriginal witnesses appear not to comply with the strictures of the court in the matter of truth telling. In a system that assesses one's credibility on the basis of how well one's testimony stands up in cross-examination, the aboriginal view of the relativity of truth can give an erroneous perception that the witness is changing his or her testimony, or simply lying, claims Sinclair (1994). Donohue (1997) concisely sums up aboriginal perspectives about the imparting of truth:

Traditional teachings seem to carry a suggestion that people will always have different perceptions of what has taken place between them. The issue, then is not so much the search for truth but the search for -- and the honouring of -- the different perspectives we all maintain. (323)

Conversely, aboriginal witnesses may be perceived as failing to assert the superiority of their own evidence by sounding uncertain. In reality, the cultural view that truth is a relative term, and that everyone must contribute towards truth telling so that more of the truth will be derived is being adhered to. This does not mean that silence can be used against a witness. In a western system, taboos against silence of a courtroom witness have grave consequences for him or her. Simply put, silence has negative repercussions.
At the same time, the western system considers certain topics and questions irrelevant to the case at hand. As a result, they are excluded from court scrutiny. Furthermore, certain topics are deemed inadmissible. Usually the various legal actors are trained to ask only those questions that may help build or demolish a case of conviction against the accused party.

The disparate ways of viewing crime and criminal behaviour affect the goals and objectives of the two justice systems. Aboriginal communities value restoration of harmony (Ross 1996; Sinclair 1994; Donohue 1996). The authors explain that in those aboriginal communities practising elements of traditional justice, harmony can only be achieved when the person wronged contributes towards the reparation process by undoing the wrong committed. The Hollow Water community justice model illustrates elements of traditional justice at work (Ross 1994, 1996; Phelan 1998; Donohue 1997).

In communities practising some form of traditional justice, restitution or compensation goes hand-in-hand with reparation (Sinclair 1994). Restitution and reparation are, therefore, the goals of aboriginal justice. Imprisonment sentences, fines and probation that theoretically fulfill the Euro-Canadian goals of retribution and deterrence cannot be dealt with until first addressing reconciliation issues. To do so would be to completely relieve the offender of any responsibility for restitution of the wrong, adds Sinclair. This is not perceived as justice in an aboriginal sense. Instead, it is perceived as an abdication of responsibility and a total exoneration of the wrongdoer.

What this all means is that, in aboriginal cultures, the divergent goals of justice originate from different value systems. In aboriginal cultures, guilt of the accused is secondary to the allegation of wrongdoing and responsibility for the crime. Reparation, restitution, rehabilitation and reconciliation are more important than punishment. The perception of the
victim and the community that justice is done is the criteria for informally measuring the success of sentencing. This is holistic or restorative justice where healing of all parties involved is an integral part of justice. This may be especially true for small communities where the inter-relatedness of the entire community impacts upon community dynamics governing justice matters.

Ross's (1996; 1992; 1989) field experience on the subject of aboriginal communities' perceptions of mainstream justice is particularly acknowledged. Ross's (1989) courtroom observations indicate that as victims and offenders, aboriginal individuals feel invisible or excluded. They also perceive themselves as powerless in a system that must decide their fate. They see their futures decided by people who, in their view, do not know them. Worse still, the 'strangers' do not seem to expend much time or effort in trying to get to know them. Arguably, this applies more so to remote communities still administered by circuit courts, where participants frequently check the time when dispensing justice, causing the system to be referred to as 'wrist watch justice' (Lowe 1985).

Ross's (1989) claims are consistent with Prégent's (1995) who also claims that Canadian indigenous people are dissatisfied with all aspects of mainstream justice. Ross (1989) suspects that it is the perception of the resultant powerlessness that is the chief contributor to First Nations' dissatisfaction with the criminal justice system. In this sense, Ross (1989) is a strong proponent of community participation in the dispensing and the delivery of justice. He asserts that even when sentencing judges do not accede to community ideas, it is proper and empowering to consult the respective communities regarding their input (Ross 1989). He adds that if western justice can be sensitive to native peoples' realities, and supportive of their best effort to effect changes, the result would be an enhancement of native peoples'
acceptance and faith in adversarial justice. Consultation with native groups and individuals produce a variety of responses. For example, some individuals prefer imprisonment, or similar types of punitive measures while others prefer diversionary community justice with rehabilitation and restitution as the chief goals of sentencing.

Ross (1989) strongly suggests that many aboriginal justice experiments promise greater chances of success than mainstream initiatives. He argues that some of the measures aboriginal justice employs for attaining deterrence and rehabilitation can be accommodated to fit western goals of justice. Support for accommodative proposals comes from First Nations scholars including from Monture-Okanee (1995).

In no way does Ross (1989) imply that there will exist harmony between aboriginal and western justice, nor does he imply that competing ideologies and conflicts lack among indigenous communities, themselves (see also La Prairie 1997). Ross (1989) comprehends the push and pull political dynamics that contribute to rifts and inefficient management. In other cases, power dynamics are evident; aboriginal victims of spousal and sexual abuse have been further victimized through banishment or excommunication. These are arguably extreme examples, and the success of aboriginal justice ventures must not go unnoticed.

Murray (1994) and Turpel (1994:163), a practising aboriginal lawyer and a specialist in legal jurisprudence, also support accommodation of aboriginal cultural values by mainstream justice. Turpel goes as far as to actually formulating a concrete alternate justice paradigm that will incorporate diverse aboriginal cultural values. Her renewed justice model, named restorative justice, mandates that Elders perform increasingly multiple roles ranging from mediation, guidance, prayers and role modelling to community sentencing.
Turpel's (1994) alternative justice paradigm is based on her rationale that mainstream justice is irrelevant and culturally insensitive to aboriginal needs and rights. She perceives substantive justice as highly problematic in that it is centred on retribution, not healing. Another perceived problem of mainstream justice is its confrontational tactic of fact-finding where strangers like judges, juries and lawyers are said to perform an impersonal role of establishing winners and losers (Turpel 1994; Ross 1992). To Turpel, the various participants in court processes are said to be dispensing justice for the state (emphasis mine). The author's perceptions on western justice suggest that aboriginal victims are lost in a system that alienates and disempowers them with individual community dynamics virtually disregarded.

Like Turpel (1994) and other aboriginal legal scholars who advocate community input to render justice initiatives more compatible with aboriginal rights and needs, Henderson's (1995) theoretical model of alternative justice needs attention. His model has all the makings of an indigenized justice system as it relates to the re-introduction of holistic justice principles. As a Research Director of Justice as Healing, Henderson claims that the dominant justice system has drastically failed aboriginal people. A renewed criminal justice system proposes to blend traditional healing with cultural components.

Henderson points out that any initiatives for renewed justice must contain multidimensional facets that fulfill a multitude of needs. To the author, a holistic approach to justice "will serve as a starting point for the de-colonization of Canadian law." By the same token, in advocating a holistic approach, Henderson is not proposing to construct an abstract or a universal theory of justice. Rather, he is seeking to turn his theory into practise by the implementation of an aboriginal community justice system that would grasp the wisdom of
Elders, and the knowledge unique to each culture. This involves a wide array of healing techniques to mirror the cultural diversity among aboriginal groups. The crux of the matter is that victims of serious crimes like sexual abuse have choices for dealing with individual and community justice and healing issues.

Like Henderson (1995) and Turpel (1994), Judge Bria Huculak (1995) offers her perspectives on the ineffectiveness of mainstream justice. Her visions on change are premised upon deep pessimism that substantive law has perpetuated. Judge Huculak's legal and scholarly experience urges the inclusion of enlightening alternatives, for instance, restorative justice that blends aboriginal cultures and traditions with western justice.

As a major component of her critical evaluation of mainstream justice, Judge Huculak (1995) argues against imprisonment as a mode for punishment. She claims that prison time is costly, in addition to its ineffectiveness as a deterrent mechanism. Judge Huculak's concise synopsis of Euro-Canadian justice, especially imprisonment's failure, necessitates that one look at the efficacy of community-based justice.

A few models of aboriginal community justice initiatives have been in operation in excess of ten years. The Hollow Water Healing Circle as practised by an Ojibway community in Manitoba is just one example. This program was implemented in the late 1980s in an Ojibway community located in Manitoba. The healing program is founded upon a protocol of 13 steps that an offender must follow through. Community justice begins with initial disclosure and ends in a cleansing ceremony with frequent follow-ups. Aboriginal and non-aboriginal team members from professional and non-professional sectors participate. The participation of social workers and community Elders is included in team effort.
The Hollow Water diversionary justice model is based on aboriginal cultural perspectives on justice; it contextualizes justice as healing (Donohue 1997). It is an inclusionary model in that it is rooted in holistic healing whereby the healing of victims, offenders and the community at large is an integral goal.

The Hollow Water Healing Circle may facilitate personal healing of victims. By participating in this program, the victim does not have to undergo the trauma of secondary victimization, as a result of aggressive cross-examination in criminal courts (Ross 1996). Ross's viewpoint is that the healing model is a mediation system that involves offenders, victims and the participating community, commencing in the early stages of criminal justice process, just after charges of sexual abuse are laid. After the pre-sentence report recommends diversion to community sentencing, all those affected by the crime must embrace face-to-face justice. By participating in a community justice program, offenders and victims avoid the adjudication/adversarial process. For offenders, participation in the adversarial process will most likely result in a criminal record.

What is unique about the Hollow Water Healing Circle is that offenders' participation is voluntary. He/she must ensure full accountability, which among many things ensures 're-integrative shaming' (Braithwaite and Mugford 1994). The implications for non-compliance to community expectations are serious: jail time. The following illustration explains the dynamics of the Healing Circle.
Hollow Water Healing Circle: 'Truth' as Healing

Step 1 -- Laying of charge(s)
Step 2 -- Pre-sentence report

After the laying of charge(s), and the preparation of pre-sentence report (step 1 and 2), the offender may voluntarily participate in either the 'Healing Circle', or be diverted back to 'mainstream justice system'.

Option 1 -- Healing Circle

<table>
<thead>
<tr>
<th>Stage One</th>
<th>Opening prayers and cultural rites.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage Two</td>
<td>Disclosure: At this point, community team comprising Elders, experts in the justice field and concerned members talks to victim and offender separately. Then, all parties come together so that decisions based on consensus, inclusion and balance can occur. Sentencing incorporates the notion of win/win. Victim satisfaction through direct restitution or compensation, and offender responsibility are crucial. Consensus based decisions underscore healing for all parties.</td>
</tr>
<tr>
<td>Stage Three</td>
<td>Cleansing ceremony and follow-up.</td>
</tr>
<tr>
<td>Stage Four</td>
<td>Holistic healing repeatedly implemented every six months to ensure that offender does not recidivate, and that healing is on-going.</td>
</tr>
</tbody>
</table>

or

Option 2 -- Mainstream Justice

<table>
<thead>
<tr>
<th>Stage One</th>
<th>Adversarial justice/court process: Third parties/lawyers act for offenders and victims. Focus on fact-finding mission. Justice is individualized. Strangers, for instance, judges and jury adjudicate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage Two</td>
<td>Guilt/innocence (lose/lose). Victim satisfaction, offender responsibility and healing not goals of justice but retribution, deterrence and rehabilitation.</td>
</tr>
<tr>
<td>Stage Three</td>
<td>Sentencing if offender loses. Offender to serve sentence in the interests of the state. Jail time/exclusion as one of the options of sentencing. Retribution and deterrence to be</td>
</tr>
</tbody>
</table>
Upon assessing the efficacy of the healing program, in all fairness, the program is not an easy way out. It has been used interchangeably with justice. The mandate of the program is to bring all the participants to a dialogue. This means the dispensing of justice within the context of community social dynamics.

Using the Hollow Water complementary justice initiative, the role of Elders is exemplified. Elders work closely with provincial courts to assess the merits of each case. They may recommend treatment, restitution and donation options as part of the sentencing (Ross 1994:248). Donohue (1997) argues that the role of Elders in contemporary times is that of an independent mediator. As the role of Elders expands, some cautionary remarks are warranted about their sentencing style (Ross 1996:258). A few community members have expressed their concerns that their Elders are just too lenient. This factor needs to be addressed.

Ross (1996) indicates other problems with mediation conducted by Elders. He suggests that members of the Hollow Water community are aware that some Elders have been victims of sexual abuse in residential schools and elsewhere. Their capacity to hand down sentences in a fair manner has been questioned. Healing of Elders has been urged in light of the community's perception that personal healing from sexual abuse must take place before an elder performs the role of a judge, a counsellor, or simply a mentor.

Nonetheless, the overall success rate of the Hollow Water program has been reported as encouraging (Phelan 1998). Phelan, a regular legal and a social commentator for Windspeaker statistically highlights the recent success of this program for healing
communities from the victimization of sexual abuse. As of January 1998, 84 sexual abuse victims and 48 offenders have benefited in one way or another. Nine out of 10 offenders have taken the responsibility to make amends to the victim and to the community.

Phelan (1998) also reports that the recidivism rates for participating offenders have reached a record low. This is because the deeply personal stories shared by the victims have an immense power over the offender. According to Phelan, truth has become part of healing. The manner of sharing the truth contrasts strikingly with Euro-Canadian procedural justice whereby 'the victim is ripped apart to support the offender's lie', as folded in the O'Connor case involving persistent cross-examination of the central victim.

Other innovative justice programs are the Attawapiskat and Sandy Lake diversionary justice programs implemented in Ontario (Robinson 1990; Clairmont 1996). These two alternative justice programs were created to 'blend native and white systems' as eloquently put forth by a band council member, Josias Fiddler (Robinson 1990). According to Robinson (A10), Fiddler stated that "we don't want to create our tribal system; we hope to marry the white and native systems and ways of thinking."

In comparison to the Hollow Water justice initiative, the Attawapiskat and Sandy Lake justice initiatives have retained comparatively more elements of western justice. Community Elders participate in the sentencing for less serious crimes or misdemeanours. All felony crimes still fall in the domain of criminal courts with incarceration as a potentially viable sentence option.

Sentencing options for the Attawapiskat and Sandy Lake justice initiatives are community-based (Robinson 1990). This entails the rehabilitation of the offender by serving his/her community. Frequently, as part of their sentencing, offenders serve the economically
disadvantaged groups, for example, disabled people and single mothers. Going on the trap-line with an elder is an alternative sentence option. One of the plausible goals of sentencing is to learn through mentoring the value of serving others.

The success of both the Sandy Lake and the Attawapiskat initiatives has been assessed using three criteria: victim satisfaction, offender recidivism and responsibility (Clairmont 1996). Clairmont states that the two programs have so far not succeeded in reducing recidivism. Nor have they been found to increase victims' satisfaction with alternative justice. Victims have complained that sentencing options are a 'slap on the wrist' much like mainstream justice sanctions. Consequently, some of the newly devised alternative justice initiatives are assessed as offender-centred with victims' input miniscule.

Notwithstanding, it is perhaps too premature to evaluate the efficacy of the two programs that are still in their infancy state. To Clairmont, certain factors like the political structure, geographic location and the needs of specific communities will determine the long-term success of the Sandy Lake and the Attawapiskat justice ventures. Time will tell.

The Ganootamaage diversionary justice project as practised in Winnipeg is a slight variation of the Attawapiskat and Sandy Lake justice initiatives. As a recently launched project, the Ganootamaage diversionary justice project will be funded by the federal and provincial governments for three consecutive years, with an allocated yearly budget of $400,000 (Redekop 1998). The provincial government and the local community will oversee justice. Just after charges are laid, the Crown will assess the merit of each case and the appropriateness of referral to community justice. So, mainstream justice has a major say in the running of the Ganootamaage project. However, the objectives of this project are
community driven. One of the main objectives of this project is to make offenders of less serious crimes responsible to their victims and the community at large.

According to the Program Director Kathy Mallett, the Ganootamaage alternative justice project is designed to make the offender reflect on his or her life, and see how he/she relates to his/her victim (Redekop 1998). Mallett is an advocate of 'meet the victim strategy' where the offender makes a personal apology to his/her victim in addition to performing volunteer service and attending cultural ceremonies. So far, only one case outcome has been cited. The offender upon reflecting upon his crime of theft indicated that he felt 'stupid and embarrassed'.

The Ganootamaage justice project embraces Elders as mentors. Elders are role models who teach by example. Equally important is the diversionary aspect of this program. For misdemeanours or less serious crimes, offenders can be diverted from jails that arguably are ineffective deterrents to recidivism. Not unlike the Attawapiskat and Sandy Lake justice models, it is too early to determine the success of the Ganootamaage project.

The overall success of the different diversionary justice initiatives is linked to offender responsibility. Alternative justice initiatives have had a positive impact in raising offender responsibility (Karp 1988). In this aspect, direct interaction of Elders with offenders has been recognized as an invaluable contribution. 'Re-integrative shaming' is a technique used as a community-based sanction by Elders. Usually personal apology and offender remorse form reconciliation strategies to the victim.

So far, the various community justice models do not integrate into their discussion the unique difficulties aboriginal women victims have to grapple with. In this regard, research by mainstream authors, for example, LaPrairie (1997; 1992) makes some valid points. She
acknowledges that in any communitarian justice initiative, the tendency to lean towards community consensus or harmony inadvertently undermines the victim's plight. Not unlike Crawford (1996), she suggests that a heavy reliance on communitarian principles may lead to parochial, intolerant and excessively punitive societies.

In her two articles, "Circle Sentencing, Restorative Justice and the Role of the Community" (1997) and "Aboriginal Crime and Justice" (1992), LaPrairie enunciates that power imbalances must be addressed in communitarian societies. Competing ideologies must be considered in communities that are re-exploring other methods of social control. She says that community harmony can only function in the presence of equilibrium between individual and collective rights. Individual aspirations must be weighed against communitarian ones. LaPrairie asserts that victim confidence is at stake. If victims' confidence in aboriginal justice initiatives is shattered, they may resort to the courts or other external or foreign mechanisms of intervention. In turn, this may result in the perpetuation of a vicious cycle of chronic dependency and alienation for victims.

A discussion paper presented by Teressa Nahane (see Kulig 1993:19) on aboriginal justice issues highlights other problems in native justice pilot projects. The problem of inequity is arguably a significant one. On the one hand, Nahane (19) claims that "aboriginal women won't support a separate system unless they're involved in setting one up." On the other hand, Nahane (19) claims that "aboriginal women oppose the use of cultural and racial considerations by law enforcers to mitigate sentencing of aboriginal men convicted [in EuroCanadian courts] of violent sexual crimes again women and children." The latter argument suggests that the judiciary is insensitive to the needs of victims by using the
cultural and racial defence. The end result is the justification for disproportional or lenient sentences to aboriginal men.

Nahanee’s (1993) argument can be taken further to address the issue of over-representation of aboriginal males in correctional settings. If majority of the victims of aboriginal male sexual offenders are aboriginal women and children, should sentencing still be meted out using cultural and racial defence. Equally important, if native justice projects are based on leniency to the offender for whatever reason(s), then will separate justice truly meet the needs of victims. To Nahanee (19) allowing native people to administer their own oppression is not freedom from colonization ...." This suggests that the success of aboriginal justice initiatives depends on equality, openness, conflict reduction and higher sensitivity to the victims' need for justice and healing.

Not unlike Nahanee, Kulig (1993:19) cautions that any diversionary justice measure should be implemented to take into account gender based inequities, a legacy of colonialism. Kulig indicates that before colonialism was imposed upon aboriginal people, egalitarian societies prevailed. Because colonialists taught aboriginal men patriarchal roles, there is a danger that diversionary justice will merely allow aboriginal men to oppress aboriginal women. This is an active form of neo-colonization where women's rights may continually be compromised.

LaRocque (1997), an aboriginal woman whose research interests lie in historical and literature issues, also makes assertions that have consequences for female aboriginal persons who have been victims of sexual crimes. Their offenders could be either aboriginal or non-aboriginal. In her critique of Sawatsky's (in Asch 1997:78-9) comparative perspectives of
aboriginal and non-aboriginal justice paradigms, LaRocque considers his analysis naive, simplistic and a reductionist way of dichotomizing aboriginal and western epistemology.

LaRocque explains that there exist ethical and moral considerations in misusing or even romanticizing culturally derived paradigms that fail to discriminate specific issues, for example, when an offender's stay in the community is so psychologically traumatic that an isolationist recourse is necessary, for instance, placement in a maximum security setting. She is suggesting that victim and community safety is of paramount importance and that 'hard time' might actually be a specific deterrent.

Contrary to Sawatsky's argument that mainstream goal of retribution has negative consequences for all parties, LaRocque finds that Sawatsky does not substantiate his point. LaRocque suggests that even the healing program as portrayed by certain non-aboriginal scholars is flawed. She explains that misconceptions of aboriginal justice exist in that the concepts of forgiveness and healing have been distorted so as to mirror white, Christian or even New Age notions of healing. She claims that for sexual offences, the Healing Circle is not an ideal alternative. Depew (1996:54) shares LaRocque's train of thought by suggesting that the healing paradigm has major pitfalls in that it homogenizes all aberrant behaviour thus trivializing criminal behaviour. Concern is expressed by Depew that the 'catch-all' phrase of healing fails to take into account the seriousness of the offence, and the legal rights involved.

In her earlier work, however, LaRocque (1993) does not imply that aboriginal models of justice and healing should be abandoned altogether, and presents evidence of their sustained viability. As it stands, she contends that in order to serve justice effectively, our existing justice system must undergo radical restructuring. She says that the goals of justice, retribution and deterrence need special attention. To her, sentencing should reflect the
seriousness of the offence. She finds that the criminal courts are too lenient towards child molesters, rapists and rapist-murderers in comparison to thieves and minor drug dealers. LaRocque proposes that offenders of sexual offences should get comparatively stiffer sentences. In this respect, work by Hirsch (1976) is noteworthy. He makes a civil libertarian argument that reform be compatible with the notion of justice. Hirsch suggests that sentences must be proportional to the crimes committed so that justice can be served equitably.

Another area of reform suggested by LaRocque (1997) is rehabilitation of the offender. She implies that rehabilitation or treatment of the offender must not be our first priority, nor should causation of sexually predatory behaviour be our focus. This implication has much validity. As a society obsessed in understanding deviant behaviour, much time and effort are expended on understanding the genesis of crime using the different offender-centered theories, ranging from genetic to bio-social, psychological and environmental ones (Curran and Renzetti 1994; Eysenck and Gudjonsson 1989). These authors acknowledge that comprehending the causation of criminal behaviour does not necessarily lead to rehabilitation or treatment strategies, particularly for sexually sadistic behaviour of psychopaths. Their argument can be taken further to incorporate the rights and needs of victims.

To support the offender-centred approach, the presiding judge who ruled in the *Plint* criminal case made startling remarks. Although Judge Hogarth declared Plint a 'sexual terrorist', and took into consideration the lack of remorse of the offender, he prematurely concluded that due to his old age, Plint is unlikely to recidivate (Hall 1988). In comparison, the 1997 Onion Lake, Saskatchewan case underscores other problems inherent in offender-centred approaches (Williams 1997:2). Daryl Rayner, the Crown prosecutor claimed that it
would not be in the public interest to file charges if the perpetrator of residential school abuse had already served time, and successfully completed a rehabilitation program that would nullify the risks for re-offending.

Arguably, offender-centred rehabilitation as one of the goals of sentencing must be conducted in a way conducive to victims' interests in justice and healing. In this way, a renewed justice process will fulfill the needs of victims who may not be silenced nor traumatized further. In a reformed justice system, victims may feel a sense of self-reliance and control over their own lives by feeling responsible for resolving their own personal disputes. This may enhance their feeling of purpose and self-worth.

LaRocque (1993) formulates a framework for a renewed justice paradigm that would accommodate victims' rights and needs. She proposes a *de-facto* two tiered system: one for petty criminals and the other one for serious and habitual criminals. LaRocque's reform strategies are reflected in newly devised programs such as the Ganootamaage justice project whereby the local community deals with the less serious offences.

As an essential reform component to the justice system, victim-offender reconciliation or 'meet the victim' is favoured (LaRocque 1993). Much like LaPrairie (1997), LaRocque contends that reconciliation can work for certain offences. It has certainly worked for O'Connor's central victim, who upon confronting the former bishop, felt that community justice functions as a positive alternative to the court system (The Prince George Citizen 1998). However, LaRocque (1993) cautions that mitigating factors, for example, the victim's age and awareness of the crime, the crime status and the community dynamics must be considered before launching restorative justice. She does not hesitate to add that
diversionary aboriginal justice models such as the Hollow Water Healing Circle are promising alternative justice models.

As a variation to the different perspectives on justice, Twinn and Dombro (1992:61) advocate that the courtroom is an inappropriate forum for dealing with justice and healing issues. Twinn and Dombro find that courtroom testimonies are personally intrusive for victims. Moreover, they find that substantive law does not support victims' rights. Instead, procedural safeguards as mandated by the *Charter* support offenders because they can deny allegations of wrongdoing (61, 64). What is to be optimally achieved is a balance between procedures used to discover the truth and the rights of the victim. This can be done in an expanded role of the criminal justice system to include the rights of the victim.

Notwithstanding, Twinn and Dombro are in fact contradicting their earlier statements that the courtroom is an inappropriate forum for dealing with sexual abuse cases. Now, they contemplate the potential for justice in a reformed system. In other words, they are indicating hope. In the reformed justice system, the offender must make amends to the victim, not the state. In this way, the offender shows he/she is truly rehabilitated.

In many ways, Twinn and Dombro's proposals for alternative justice correspond to Galaway's (1988) model. Galaway's Minnesota-based research on informal justice/mediation reveals that victims' rights are paramount to the delivery of equitable justice given that no one can effectively speak for victims' rights, except the victim. At the same time, Twinn and Dombro's reform proposals do not in any significant way differ from those forwarded by LaPrairie (1991; 1997). However, the writers caution that a reformed justice system must protect those who are falsely accused. The recently enacted provisions of the *Criminal Code*, such as section 486, aim to do just this.
In concluding this chapter then, it can be suggested that the adversarial justice system is a rhetorical system that defeats its own purpose and goals by ensuring equity and justice only in theory. Research suggests that community involvement in the delivery of justice is still a viable way for increasing First Nations' satisfaction with the justice system as well as promoting feelings of personal control and empowerment. The viewpoint of the central victim in the O'Connor case illustrates the need for community input in the dispensing of justice.

In all instances, the proposed and the already launched models of aboriginal justice are not fully autonomous. In this regard, Kulig (1993) asserts that within our Constitutional framework that dictates the supremacy of the Charter, it is not possible to implement totally separate justice initiatives. However, community justice initiatives as we know them today blend the vital elements of traditional justice with mainstream justice thus making the dispensing and delivery of justice holistic. This in turn may promote healing in multifaceted ways.

Most notably, alternative justice measures like the Hollow Water Healing Circle are renowned for their inclusion of all parties in the dispensing of justice. Communities', victims', offenders' and Elders' participation in the delivery of justice for petty crimes and some serious ones has arguably led to more favourable changes in the victims' perceptions of the process. However, even community-based justice initiatives are not flawless for some of the challenges must be addressed and dealt with. These include lenient treatment from Elders and the need to heal them. To quote Ross (1996) "the healing path has potholes, too."

In order to demonstrate plurality among aboriginal communities, adjudication as opposed to mediation is a preferred option for some scholars. For example, LaRocque (1997) argues
in favour of deterrence for serious crimes. Indefinite jail time is viewed as physically incapacitating offenders. This compares with mainstream goal of punishment. In contrast, another aboriginal scholar, Huculak (1995) adamantly argues against imprisonment as a mode for deterrence. In the final analysis, differences in opinions among aboriginal communities are recognized. Also, it is acknowledged that contemporary aboriginal cultures are not immutable. Their needs and priorities change from time to time.

On the whole, it must be understood that of those aboriginal communities that subscribe to alternative justice initiatives, their proposals for change are not piece-meal or band-aid efforts. Rather, their proposals are viewed as holistic measures aimed at addressing some of the disparities in native-white perspectives on crime, sentencing and doing justice to victims. Above all, their proposals for alternative justice take into consideration the fiscal constraints and the political palatability of select programs. By far, community justice gives aboriginal community justice a stamp of credibility and legitimacy. However, community justice models must guard against co-optation that will only widen the 'net' of government control (Depew 1996).
Chapter Seven

CONCLUSIONS

Sexual abuse of Indian children in Canadian residential schools was not only about colonial policies to subjugate a group of people, they were also about power. Inadvertently, the crime of sexual abuse wounded the victims in multifaceted ways. Victims experienced spiritual, cultural, physical as well as emotional abuse as a result of their early life sexual trauma that occurred in 'total institutions' disguised as sacred and benevolent. Perhaps the Assembly of First Nations (AFN) (1994) comprehensive countrywide study has best documented the far-reaching wounding of those adults who had been subjected to the childhood trauma of sexual abuse.


The non-scholarly accounts of sexual abuse, specifically media accounts from mainstream newspapers, have arguably made a mockery of victims' experiences by sensationalizing the story. At other times, media accounts have presented the reader with news that is built on speculation, and/or disseminated interpretations that do not necessarily correspond to victim accounts. My thesis recognizes the credibility issues that sensationalist sources may raise.
However, many non-scholarly sources provide valuable insight and knowledge, particularly information provided by interest groups, and aboriginal individuals and groups. My thesis has balanced the scholarly and popular research with the final purpose of giving authenticity to the real stories of victims.

A significant number of stories suggest that public disclosures of sexual abuse do not suffice. Something had to be done for the pain, shame, anger and guilt. The first step undertaken by survivors is healing of the individual and communal self. A range of healing strategies has been chosen to achieve the goal of healing. They include cultural revival ceremonies, regular Talking Circles, Healing Circles and a blend of non-aboriginal and aboriginal therapies, including Hill's (1995) therapy based on adaptation of the principles of the Sacred Tree.

The second step taken to deal with the aftermath of sexual abuse is to mobilize legal justice for the wrongs incurred. Criminal and civil proceedings have been invoked in the hopes of achieving redress. Criminal proceedings have presented unique problems. Victims quickly found that the criminal court process is not about expediting justice. Instead, they found that the adjudication process is complicated and time consuming. Legal jargon is difficult to comprehend. Yet the responsibility to wade through the tumultuous process of justice has been borne by victims. They had to substantiate the trauma of sexual abuse; they were placed on the stand and rigorously tested whether they were actually victimized. As a result, they experienced secondary victimization. To say that victims were overwhelmed with a foreign way of justice barely touches their ordeal.

The O'Connor criminal case illustrates one victim's ordeal. The central victim Marilyn Belleau's journey through the maze of legal technicalities and hurdles best epitomizes the
difficulties that victims may encounter. For one, the task of dealing with substantive law is at best cumbersome. In sexual abuse cases, procedural justice must deal with three areas of fact-finding, namely consent, full disclosure and credibility. As aboriginal and mainstream views on fact-finding differ, legal processes that aim to discover the adversarial sense of 'truth' are culturally incompatible with aboriginal justice.

Nor does procedural justice impact each party in an equitable manner. This is because substantive law mandates that offenders' rights must not be compromised. Where there exists a perceived danger of compromises, the Charter ensures that the danger is nullified at potentially a great cost to the victim. Given this finding, as a Constitutional legislation, the Charter still has to deal with the unintended consequences of law that merely add to the layers of legal hurdles a victim must face. Notwithstanding, Belleau has demonstrated her courage to persist with the criminal courts for almost a decade.

The other avenue for seeking justice is through the civil courts. Victims are seeking justice through civil courts by way of monetary compensation. In comparison to criminal court litigation, civil court litigation has presented its own problems. The problems are mainly embedded in the area of responsibility or culpability. The Blackwater et al v. Plint et al (1998) case best illustrates the difficulties with civil courts. Despite Judge Brenner's ruling that the church and the federal government are indirectly or vicariously responsible for the sexual victimization of aboriginal children educated in Indian Residential Schools, there is a reluctance to admit legal liability. The moderator for the United Church, Phipps, argues that the church's liability role should be less than that of the government; intentions for refuting the lower court's decision are well conveyed. For its part, the government may indefinitely postpone formal and informal settlements. The government has hoped that the
350 million dollars 'Healing Package' will work as a panacea for all kinds of cases. This has not happened.

In other individual cases of legal compensation across the country, victims have been paid amounts averaging $10,000 each for damages (Tibbetts 1998). Already, mainstream accounts point out the mismanagement of compensation money by individuals who allege sexual victimization in Canadian Indian residential schools. The criticism is mainly about survivors spending 'compensation or tax payers money unwisely on booze and drugs' (Tibbetts 1998).

In a nutshell then, both criminal and civil court processes have meant a maze of complexities and difficult tasks that have, it is suggested, contributed towards an injustice for victims. Personal and communal healing may be interrupted amidst the dubiousness the courts raise. In the O'Connor trial, the victim finally had enough of a system that personally victimized her. She opted for community-based healing even after she admittedly refused to comment about the sincerity of the offender (O'Connor's Apology: Appendix 4). To her, the opportunity to confront the offender was an important factor for aiding her personal healing. Community justice is equated with personal empowerment, which the criminal courts had denied. In the end, the victim's path to healing was weighed against procedural justice, and healing became justice.

With the decreasing confidence in Euro-Canadian justice, aboriginal individuals and communities have proposed alternative aboriginal justice measures to meet their justice and healing needs. Aboriginal community justice initiatives as avenues for healing and justice are embraced by those scholars proposing enlightening alternatives to Euro-Canadian justice.

In select communities, alternative justice initiatives have already been implemented. One of the justice initiatives that has been well established and extensively documented for its efficacy is the Hollow Water Healing Circle, as practised in Manitoba. The Healing Circle is a highly structured quasi-independent restorative justice initiative. It employs diversionary justice where Elders, victims and offenders are truly involved in the dispensing of holistic justice. Critics of this model have questioned its communitarian ideals and its ability to deliver equitable justice. However, proponents of the Healing Circle have seen this initiative work productively for over a decade. In particular, they are encouraged by its success in making offenders more accountable in addition to increasing the direct involvement of victims in all aspects of the delivery of justice. Overall, proponents view an increased aboriginal input in the administration of justice as enhancing self-sufficiency and autonomy.

Compared to the Hollow Water Healing Circle, the newer justice initiatives have yet to withstand the passage of time in order to determine their feasibility and community satisfaction. Research on the newer projects is scanty and inconclusive. Initiatives like the Attawapiskat, Sandy Lake and the Ganootamaage are still in their infancy. However, all alternative or diversionary justice strategies require adequate funding and the will of respective parties to oversee their success. More importantly, they require a certain amount of authenticity. Given that various aboriginal justice initiatives are subject to 'red-tape' where governments control fiscal and monetary arrangements, there is a danger of filtering of projects.
It has been recognized that as the political structure and needs of each community differ, so will their vision of justice programs. For example, for small communities like the Alkali Lake community, community-based ventures need less structure or bureaucratic apparatus. Hence, it must be up to the individual as well as his/her community to devise justice programs that foster their unique justice and healing needs. To reiterate Henderson (1995), justice as healing is an aboriginal concept that must accommodate the needs of diverse aboriginal cultures.

In order to reflect diversity amongst aboriginal communities, some individuals and communities strongly opt against alternative justice strategies. They prefer to invoke criminal proceedings for serious crimes with retribution as one of the main goals of justice. More importantly, they advocate for consideration of individual rights, especially the rights of female aboriginal victims that communitarian justice does not support. In this regard, LaRocque's (1997) sentiments regarding alternative justice echo the diversity in aboriginal communities in that incarceration as a retributive mechanism may be a preferred deterrence mechanism.

LaRocque's claims are in line with pan-Canadian national organizations, example The National Coalition of Women against Sexual Violence who formally denounce alternates to retribution. The Coalition opts for proportionality to crime: let punishment fit the crime. This means hard time for serious offences. Unequivocally, they indicate that Belleau's decision to participate in the community-based Healing Circle sends a bad precedent because some women victims of sexual offences may decide against adversarial justice.

Aboriginal Women's Organizations have given their position about alternative justice initiatives such as the Alkali Lake Healing Circle. Viola Thomas, president of the United
Native Nations claims that "the Healing Circle diminishes the impact of sexual abuse ... against women and children ...." (Danard 1998:A3) To Thomas, the implications of implementing alternative justice strategies are that aboriginal women's rights are devalued by the government. Debra Bell offers similar explanations for opposing alternative justice ventures. As a sexual assault coordinator at a Saanichton agency in Victoria, she worries that the decision of the victim in the *O'Connor* case will "push the rights of aboriginal women back many years." (A3) Bell suggests that O'Connor never took responsibility for his crime, yet the Circle offered him an easy way to circumvent the justice system thus minimizing the victim's personal trauma.

In all then, justice and healing issues are not clear-cut. The Canadian criminal justice system arguably unavoidably impedes justice by focusing upon the offender's as well as the state's rights. For some aboriginal victims of sexual abuse, justice issues can be confounded with healing issues thus adding to their confusion and discontent surrounding adjudication. For other victims, justice is synonymous with healing. The victim in the *O'Connor* case takes this view.

For some other victims, adversarial justice is a vital precursor to healing. In this respect, research suggests that a segment of the aboriginal population holds the view that convictions of wrongdoers will pave the way for the healing path. Danny Watts, an aboriginal victim of Plint, is just one example of those who view that justice will enable healing (McLintock 1995). To the believers of the adjudication process, justice comes first. The criminal justice system enables personal healing by punishing the offender. The latter view is widely held by mainstream society.
My study demonstrates that healing from sexual abuse is a complex issue. Healing is a 'life goal'. Moreover, healing can be tailored to fit individual experiences once justice has been seen to be done, either through the adjudication process or the mediation process, which community justice represents.

Finally, what my study does not address is the percentage of aboriginal victims who opt for alternative justice and the percentage of aboriginal victims who opt for adversarial justice. A real sense of the actual figures is not possible given that information on the exact number of victims of sexual abuse in Canadian Indian residential schools is not provided. This is because statistical information on the number of victims who have launched the adjudication process in contrast to the number of victims who have participated in community justice initiatives is not provided. This problem is compounded by the sensitive nature of the topic and the confidentially it necessitates. Therefore, a study involving statistical data would be too challenging. The methodology as it involves representative populations or sampling would pose the greatest challenge.

Hence, my study merely reflects the diversity of opinion by incorporating the experiences of only those victims who have voiced their personal opinions about mainstream justice, and the feasibility of alternatives to jails for victims who express their dissatisfaction with the way our criminal and civil court litigation unfolds.
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Appendix One

RESIDENTIAL SCHOOLS IN BRITISH COLUMBIA
Nuu-Chah-Nulth Tribal Council (1997); McFadden (1971)

<table>
<thead>
<tr>
<th>AREA</th>
<th>LOCATION</th>
<th>SCHOOL</th>
<th>AFFILIATION</th>
<th>PERIOD OF OPERATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Alert Bay</td>
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<td>Anglican</td>
<td>1929-1975</td>
</tr>
<tr>
<td>2</td>
<td>Chemainus</td>
<td>Kuper Island</td>
<td>Roman Catholic</td>
<td>1890-1970</td>
</tr>
<tr>
<td>3</td>
<td>Cranbrook</td>
<td>St. Eugene</td>
<td>&quot;</td>
<td>1890-1970</td>
</tr>
<tr>
<td>4</td>
<td>Fraser Lake</td>
<td>Lejac</td>
<td>&quot;</td>
<td>1910-1976</td>
</tr>
<tr>
<td>5</td>
<td>Kamloops</td>
<td>Kamloops</td>
<td>&quot;</td>
<td>1890-1978</td>
</tr>
<tr>
<td>6</td>
<td>Lower Post</td>
<td>Lower Post</td>
<td>&quot;</td>
<td>1951-1975</td>
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<td>Lytton</td>
<td>St. George's</td>
<td>Anglican</td>
<td>1901-1979</td>
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<td>8</td>
<td>Mission</td>
<td>St. Mary's</td>
<td>Roman Catholic</td>
<td>1861-1984</td>
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<td>9</td>
<td>North Vancouver</td>
<td>Squamish</td>
<td>&quot;</td>
<td>1900-1959</td>
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<td>Port Alberni</td>
<td>Alberni</td>
<td>United Church</td>
<td>1920-1973</td>
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<td>Roman Catholic</td>
<td>1922-1975</td>
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<td>Tofino</td>
<td>Christie/Kawkawis</td>
<td>&quot;</td>
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<td>Williams Lake</td>
<td>St. Joseph Mission</td>
<td>&quot;</td>
<td>1891-1981</td>
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<td>Chilliwack</td>
<td>Coquileetza</td>
<td>&quot;</td>
<td>1890-1941</td>
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<td>United Church</td>
<td>1904-1939</td>
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<td>Northwest</td>
<td>Kitimat</td>
<td>Methodist and by the 1920s the United Church</td>
<td>1883-1941</td>
</tr>
</tbody>
</table>
Appendix Two

EXCERPTS FROM Bill C-49

Amendment of the Criminal code, immediately after section 273:

273.1 (1) Subject to subsection (2) and subsection 265(3), 'consent' means for the purposes of sections 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.

(2) No consent is obtained, for the purposes of section 271, 272 and 273, where:
(a) the agreement is expressed by the words or conduct of a person other than the complainant;
(b) the complainant is incapable of consenting to the activity;
(c) the accused induced the complainant to engage in the activity by abusing a position of trust, power and authority;
(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity;
or
(e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

273.2 It is not a defence to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where:
(a) the accused's belief from the accused;
   (i) self-induced intoxication; or
   (ii) recklessness or wilful blindness; or
(b) the accused did not take reasonable steps, in the circumstances known to the accused time, to ascertain that the complainant was consenting.

Section 276 is repealed and substituted with the following:

276. (1) In proceedings in respect of an offence under section 151, 152, 155 or 159, subsection 160(2) or (3) or section 170, 171, 173, 271, 272 or 273, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant:
(a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge;
or
(b) is less worthy of belief.

(2) In proceedings in respect of an offence referred to in subsection (1), no evidence shall by adduced by or on behalf of the accused that the complainant has engaged in sexual activity other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person, unless the judge, or
justice determines, in accordance with sections 276.1 and 276.2 that the evidence:
(a) is of specific instances of sexual activity;
(b) is relevant to any issue at trial; and
(c) has significant probative value that is not substantially outweighed by the
danger of prejudice to the proper administration of justice.
(3) in determining whether evidence is admissible under subsection (2), the judge or
or justice shall take into account:
(a) the interest of justice, including the right of the accused to make full answer
and defence;
(b) society's interest in encouraging the reporting of sexual offences;
(c) whether there is a reasonable prospect that the evidence will assist at a just
determination;
(d) the need to remove from the fact-finding process any discriminatory belief or
bias;
(e) the risk that the evidence may unduly arouse sentiments of prejudice,
sympathy or hostility
(f) the potential prejudice to the complainant's personal dignity and right of
privacy;
(g) the right of the complainant and of every individual to personal security
and to the full protection of the law; and
(h) any other factor that the judge or justice considers relevant
Appendix Three

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Part I of the Constitution Act, 1982

GUARANTEE OF FUNDAMENTAL RIGHTS AND FREEDOMS

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:
   (a) freedom of conscience and religion;
   (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
   (c) freedom of peaceful assembly; and
   (d) freedom of association.

DEMOCRATIC RIGHTS

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

MAXIMUM DURATION OF LEGISLATIVE BODIES / Continuation in special circumstances

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

   (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

MOBILITY RIGHTS: Right to move and gain livelihood / Limitation / Affirmative action programs

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

   (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
   (a) to move to and take up residence in any province; and
   (b) to pursue the gaining of a livelihood in any province.

   (3) The rights specified in subsection (2) are subject to
(a) any laws or practises of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who were socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

LEGAL RIGHTS

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

SEARCH OR SEIZURE

8. Everyone has the right to be secure against unreasonable search or seizure.

DETENTION OR IMPRISONMENT

9. Everyone has the right not to be arbitrarily detained or imprisoned.

ARREST OR DETENTION.

10. Everyone has the right on arrest or detention
(a) to be informed promptly of the reasons therefor;
(b) to retain and instruct counsel without delay and to be informed of that right; and
(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

PROCEEDINGS IN CRIMINAL AND PENAL MATTERS

11. Any person charged with an offence has the right
(a) to be informed without unreasonable delay of the specific offence;
(b) to be tried within a reasonable time;
(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
(e) not to be denied reasonable bail without just cause;
(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

TREATMENT OR PUNISHMENT

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

SELF-INCRIMINATION

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

INTERPRETER

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

EQUALITY RIGHTS: EQUALITY BEFORE AND UNDER LAW AND EQUAL PROTECTION AND BENEFIT OF LAW / Affirmative action programs

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

ENFORCEMENT: ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS / Exclusion of evidence bringing administration of justice into disrepute

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

OTHER RIGHTS AND FREEDOMS NOT AFFECTED BY CHARTER

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

MULTICULTURAL HERITAGE

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

RIGHTS GUARANTEED EQUALLY TO SEXES

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

APPLICATION OF THE CHARTER

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

CITATION

34. This Part may be cited as the Canadian Charter of Rights and Freedoms.
"Thank you for what you have said. I have listened and heard. I only wish that we had this opportunity eight years ago. I have had a very difficult time and I believe this process will start the necessary healing".

"I am so sorry. I want to apologize for my breach as a priest and my unacceptable behavior, which was totally wrong."

"I took a vow of chastity and I broke it. I apologize for the harm I have done. I have and will continue to do my penance until I die, both in the community and before God."

"I have come here today to apologize for the harm I have done in the hopes that there will be healing of the rifts between our communities, not because I have to, but because I want to. Our views of the case may be different, but I know that it is time to bring us together and to heal. You have spoken about your anger and your sorrow and I respect what you have said. It is a very important step for both of us and communities to help start healing. I now realize there were incidents and events that occurred at the residential schools that were wrong."

"But it was not all bad. Please remember the good things as well: the pipe band, the academic education, the good work of many of the priests and nuns. Do not condemn them because of the conduct of myself and others."
Figure 1.1

HILL'S (1995) THERAPEUTIC PRINCIPLES: TREE OF LIFE

- to know we are accepted & believed when we speak
- to be heard when we communicate
- to know others have faith & trust in us
- to be allowed to take our place in the world
- to feel secure and at peace with one's self
- to feel that one's existence is not detrimental, but beneficial to the important people in one's life

Tree of Life
RICKS'S (1991) MODIFIED MODEL FOR EMPOWERMENT TRAINING

Figure 1.2

AFFECTS OF SELF
- Trauma Resolution
- Grieving
- Self-Image
- Affiliation/Relationships

OWN LIFE
- Life Skills
  - Communication
  - Awareness
  - Interpersonal Relationships
  - Discernment/Judgement

UNDERSTANDING
- Models, Frameworks and Research on Power, Abuse, Self-Awareness, Life Skills, and Planned Change

OTHERS' LIVES